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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2303

**Introduced by Committee on Judiciary (Jones (Chair), Evans,
Laird, Levine, Lieber, and Montanez)**

February 22, 2006

An act to amend Section 6450 of the Business and Professions Code, to amend Sections 896 and 2982 of the Civil Code, to amend Sections 170.3, ~~335.1, 366.2, 209, 416.10, 488.080, 699.080,~~ 904.1, 904.2, 1276, 1277, 1278, 1278.5, and 1279.5 of, ~~and to amend and repeal Section 209 of,~~ the Code of Civil Procedure, to amend Section 9321 of the Commercial Code, to amend Section 5220 of the Corporations Code, to amend Sections 2103, 2104, 2106, and 2107 of the Family Code, to amend Sections 12585, 12599, 12599.1, 12599.2, and ~~31000.6~~ 68666 of, and to add Section 68756 to, the Government Code, to amend Section 959.1 of the Penal Code, to amend Sections 11709.2 and 11713.21 of the Vehicle Code, and to amend Sections 366.3 and 15657.03 of the Welfare and Institutions Code, relating to the judiciary.

LEGISLATIVE COUNSEL'S DIGEST

AB 2303, as amended, Committee on Judiciary. Judiciary: omnibus bill.

(1) Existing law requires all paralegals, as defined, to certify completion every 3 years of 4 hours of mandatory continuing legal education in legal ethics.

This bill would instead require all paralegals to certify completion every 2 years of 4 hours of mandatory continuing legal education in legal ethics and 4 hours of mandatory continuing legal education in general law or an area of specialized law.

(2) Existing law sets forth standards for determining liability in an action seeking the recovery of damages arising out of, or related to, deficiencies in residential construct, design, and related issues, as specified, including standards governing shower and bath enclosures and ceramic tile with respect to water issues.

This bill would instead set forth standards governing showers, baths, and related waterproofing systems, and governing the waterproofing system behind or under ceramic tile, as specified.

(3) The Car Buyer's Bill of Rights requires a conditional sale contract for a motor vehicle to include, and, ~~on and after July 1, 2006,~~ a dealer to display, a specified notice to inform the buyer of a used vehicle with a purchase price of less than \$40,000 of his or her right to obtain a contract cancellation option agreement. Existing law excepts specified vehicles from that contract cancellation option requirement, including motorcycles and recreational vehicles.

This bill would require the notice provisions in a conditional sale contract, or displayed by a dealer, to provide that a recreational vehicle is excepted from that contract cancellation option requirement. The bill would also make a technical, nonsubstantive change to a related provision.

(4) Existing law sets forth the procedures for filing a writ of mandate to review the question of the disqualification of a judge. Existing law requires that petition to be filed within 10 days of notice to the parties of the decision.

This bill would instead require that petition to be filed and served within 10 days after service of written notice of entry of the court's order granting or denying a motion for disqualification, or as specified if served by mail.

(5) Under existing law, a prospective trial juror who has been summoned for jury service and fails to attend as directed or respond to the court may be compelled to attend, as specified. In addition, after an order to show cause hearing, the court may find the prospective juror in contempt of court, which is punishable by fine, incarceration,

or both. Until January 1, 2007, existing law permits the court, in lieu of imposing penalties for contempt, to impose reasonable monetary sanctions of no more than \$250 for a first violation, \$750 for a 2nd violation, and \$1,500 for the 3rd and any subsequent violation, upon a prospective juror who has failed to respond and who has not been excused, after first providing the prospective juror with notice and an opportunity to be heard, as specified. *Existing law also requires the Judicial Council, by December 31, 2005, to report to the Legislature regarding the effects of the implementation of these provisions.*

~~This bill would delete that date, thereby extending~~ *extend the operative date of those provisions indefinitely to January 1, 2010, and would also delete a related, obsolete provision provide that the Judicial Council report to the Legislature by December 31, 2008, regarding that implementation.*

~~(6) Existing law establishes a 2-year time limitation for commencing any action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another.~~

~~This bill would require the application of that time limitation notwithstanding any other provision of law providing for a shorter statute of limitations period.~~

~~(7) Existing law establishes a time limitation for commencing an action for liability against a person after that person's death, if the cause of action survives, and sets that time limitation within one year after the date of death.~~

~~This bill would increase that time limitation from one year to 2 years.~~

~~(8)–~~

~~(6) Existing law prescribes procedures for serving a summons on a corporation and specifies the persons to whom a copy of the summons and the complaint may be delivered.~~

~~This bill would include among those persons who may receive that service and delivery a chief executive officer, a controller, and a chief financial officer.~~

~~(9) Existing law requires certain documents to be filed with a levying officer under a writ of attachment or execution within 5 days of the levy.~~

~~This bill would instead require that filing within 5 court days of the levy.~~

~~(10)–~~

(7) Existing law provides that an appeal is to the court of appeal, and, in a limited civil case, to the appellate division of the superior court. Existing law provides that an appeal may be taken from an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

This bill would instead provide that an appeal may be taken from a written order of dismissal following the order granting a motion to dismiss the action on the ground of inconvenient forum.

~~(11)–~~

(8) Existing law sets forth the procedures for a change of name, including requiring an application for a name change to be made to the superior court of the county where the person whose name is proposed to be changed resides, by petition signed by the person, or if the person is under 18 years of age, signed by one of the person's parents, if living, or if both parents are dead, then by the guardian of the person.

This bill would revise and recast these provisions to, among other things, modify the procedures for persons objecting to a name change and notice thereto, as specified.

~~(12)–~~

(9) Until January 1, 2007, existing law provides that a licensee in ordinary course of business, as defined, takes its rights under a nonexclusive license free of a security interest in the intangible created by the licensor and takes its leasehold interest free of a security interest in the goods created by the lessor, as specified.

This bill would extend the operation of that provision to January 1, 2010.

~~(13)–~~

(10) The Nonprofit Public Benefit Corporation Law prohibits a director of a nonprofit public benefit corporation from being elected for terms greater than 3 years, as fixed in the articles or bylaws.

This bill would instead allow those directors to be elected for terms no greater than 4 years, as fixed in the articles or bylaws.

~~(14)–~~

(11) Existing law requires each party to a proceeding for dissolution of marriage to serve on the other party specified financial disclosure statements. Existing law authorizes a complying party to elect to take one or both of specified actions with respect to a noncomplying party.

This bill would make the first provision described above applicable to a party who has appeared in, rather than a party to, that proceeding. The bill would also expand the actions a complying party may take with respect to a noncomplying party to include filing a motion showing good cause for the court to grant the noncomplying party's voluntary waiver of the receipt of the complying party's disclosure.

~~(15)–~~

(12) Existing law requires a charitable organization, unincorporated association, or a trustee holding property for charitable purposes to register its articles of incorporation with the Attorney General's Registry of Charitable Trusts within 30 days of receiving the property.

This bill would instead require these entities to file an initial registration form with the Attorney General, and would require the Attorney General to adopt rules and regulations as to the contents of that form and related procedures. The bill would make other procedural changes relating to the means of payment of the annual registration or renewal fee by other entities required to register with the Attorney General's Registry of Charitable Trusts.

~~(16) Existing law provides a specified procedure that requires the county board of supervisors, upon the request of the county assessor or sheriff, to contract with and employ legal counsel to assist the assessor or sheriff in the performance of his or her duties in any case where the county counsel or the district attorney would have a conflict of interest in representing the assessor or sheriff, as defined.~~

~~This bill would revise this procedure and extend those provisions to requests made by an assessor or sheriff after he or she leaves office, under specified circumstances.~~

~~By imposing new duties on a county, this bill would impose a state-mandated local program.~~

~~(17)~~

(13) *Existing law authorizes the Supreme Court to raise the guideline limitation on investigative and other expenses allowable for counsel representing indigent defendants in automatic appeals arising out of a judgment of death or for state postconviction proceedings in these cases, to \$25,000 without an order to show cause.*

This bill would instead authorize the Supreme Court to set that guideline, and would delete the \$25,000 limitation on that guideline.

(14) Existing law authorizes the Commission on Judicial Performance to, among other things, disqualify, suspend, retire, or censure a judge for specified reasons. Existing law authorizes the

commission to exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers.

This bill would provide the Commission on Judicial Performance access to nonpublic and confidential records relevant to the performance of judges, former judges, and subordinate judicial officers, and would provide a mechanism for the public disclosure thereof, as specified.

~~(18)–~~

(15) Existing law allows a criminal prosecution to be commenced by filing an accusatory pleading in electronic form with the magistrate, or in a court having authority to receive it, under specified conditions. Existing law also authorizes a court to receive and file a notice of parking violation or a notice to appear in electronic form under certain conditions.

This bill would revise and recast those conditions for the receipt and filing of an accusatory pleading or a notice to appear in electronic form.

~~(19)–~~

(16) Existing law requires the juvenile court to conduct periodic status review hearings every 6 months, and, in certain cases, to terminate the parental rights to, and to order a permanent plan of adoption or legal guardianship for, a dependent child of the juvenile court.

This bill would allow the court to conduct those status review hearings at any time earlier than 6 months, if in the best interest of the child.

~~(20)–~~

(17) Existing law provides for emergency protective orders with respect to elder abuse, as specified. For those purposes, existing law requires the respondent to be personally served at least two days before the hearing on the protective order.

This bill would instead require at least five days service before that hearing.

~~(21) The superior courts have original jurisdiction over certain civil and criminal proceedings.~~

~~This bill would require every superior court to provide self-help services to self-represented parties in all types of civil actions and proceedings, as specified, and to provide those services in languages other than English, where appropriate. The bill would further require each superior court to give priority to underserved areas and to the~~

~~provision of court-based services, supervised by an attorney, and coordinated with other legal service providers in the area.~~

~~(22) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6450 of the Business and Professions
- 2 Code is amended to read:
- 3 6450. (a) "Paralegal" means a person who holds himself or
- 4 herself out to be a paralegal, who is qualified by education,
- 5 training, or work experience, who either contracts with or is
- 6 employed by an attorney, law firm, corporation, governmental
- 7 agency, or other entity, and who performs substantial legal work
- 8 under the direction and supervision of an active member of the
- 9 State Bar of California, as defined in Section 6060, or an attorney
- 10 practicing law in the federal courts of this state, that has been
- 11 specifically delegated by the attorney to him or her. Tasks
- 12 performed by a paralegal include, but are not limited to, case
- 13 planning, development, and management; legal research;
- 14 interviewing clients; fact gathering and retrieving information;
- 15 drafting and analyzing legal documents; collecting, compiling,
- 16 and utilizing technical information to make an independent
- 17 decision and recommendation to the supervising attorney; and
- 18 representing clients before a state or federal administrative
- 19 agency if that representation is permitted by statute, court rule, or
- 20 administrative rule or regulation.
- 21 (b) Notwithstanding subdivision (a), a paralegal shall not do
- 22 the following:
- 23 (1) Provide legal advice.
- 24 (2) Represent a client in court.

1 (3) Select, explain, draft, or recommend the use of any legal
2 document to or for any person other than the attorney who directs
3 and supervises the paralegal.

4 (4) Act as a runner or capper, as defined in Sections 6151 and
5 6152.

6 (5) Engage in conduct that constitutes the unlawful practice of
7 law.

8 (6) Contract with, or be employed by, a natural person other
9 than an attorney to perform paralegal services.

10 (7) In connection with providing paralegal services, induce a
11 person to make an investment, purchase a financial product or
12 service, or enter a transaction from which income or profit, or
13 both, purportedly may be derived.

14 (8) Establish the fees to charge a client for the services the
15 paralegal performs, which shall be established by the attorney
16 who supervises the paralegal's work. This paragraph does not
17 apply to fees charged by a paralegal in a contract to provide
18 paralegal services to an attorney, law firm, corporation,
19 governmental agency, or other entity as provided in subdivision
20 (a).

21 (c) A paralegal shall possess at least one of the following:

22 (1) A certificate of completion of a paralegal program
23 approved by the American Bar Association.

24 (2) A certificate of completion of a paralegal program at, or a
25 degree from, a postsecondary institution that requires the
26 successful completion of a minimum of 24 semester, or
27 equivalent, units in law-related courses and that has been
28 accredited by a national or regional accrediting organization or
29 approved by the Bureau for Private Postsecondary and
30 Vocational Education.

31 (3) A baccalaureate degree or an advanced degree in any
32 subject, a minimum of one year of law-related experience under
33 the supervision of an attorney who has been an active member of
34 the State Bar of California for at least the preceding three years
35 or who has practiced in the federal courts of this state for at least
36 the preceding three years, and a written declaration from this
37 attorney stating that the person is qualified to perform paralegal
38 tasks.

39 (4) A high school diploma or general equivalency diploma, a
40 minimum of three years of law-related experience under the

1 supervision of an attorney who has been an active member of the
2 State Bar of California for at least the preceding three years or
3 who has practiced in the federal courts of this state for at least the
4 preceding three years, and a written declaration from this
5 attorney stating that the person is qualified to perform paralegal
6 tasks. This experience and training shall be completed no later
7 than December 31, 2003.

8 (d) Every two years, commencing January 1, 2007, any person
9 that is working as a paralegal shall be required to certify
10 completion of four hours of mandatory continuing legal
11 education in legal ethics and four hours of mandatory continuing
12 legal education in either general law or in an area of specialized
13 law. All continuing legal education courses shall meet the
14 requirements of Section 6070. Certification of these continuing
15 education requirements shall be made with the paralegal's
16 supervising attorney. The paralegal shall be responsible for
17 keeping a record of the paralegal's certifications.

18 (e) A paralegal does not include a nonlawyer who provides
19 legal services directly to members of the public, or a legal
20 document assistant or unlawful detainer assistant as defined in
21 Section 6400, unless the person is a person described in
22 subdivision (a).

23 (f) This section shall become operative on January 1, 2004.

24 SEC. 2. Section 896 of the Civil Code is amended to read:

25 896. In any action seeking recovery of damages arising out
26 of, or related to deficiencies in, the residential construction,
27 design, specifications, surveying, planning, supervision, testing,
28 or observation of construction, a builder, and to the extent set
29 forth in Chapter 4 (commencing with Section 910), a general
30 contractor, subcontractor, material supplier, individual product
31 manufacturer, or design professional, shall, except as specifically
32 set forth in this title, be liable for, and the claimant's claims or
33 causes of action shall be limited to violation of, the following
34 standards, except as specifically set forth in this title. This title
35 applies to original construction intended to be sold as an
36 individual dwelling unit. As to condominium conversions, this
37 title does not apply to or does not supersede any other statutory
38 or common law.

39 (a) With respect to water issues:

1 (1) A door shall not allow unintended water to pass beyond,
2 around, or through the door or its designed or actual moisture
3 barriers, if any.

4 (2) Windows, patio doors, deck doors, and their systems shall
5 not allow water to pass beyond, around, or through the window,
6 patio door, or deck door or its designed or actual moisture
7 barriers, including, without limitation, internal barriers within the
8 systems themselves. For purposes of this paragraph, “systems”
9 include, without limitation, windows, window assemblies,
10 framing, substrate, flashings, and trim, if any.

11 (3) Windows, patio doors, deck doors, and their systems shall
12 not allow excessive condensation to enter the structure and cause
13 damage to another component. For purposes of this paragraph,
14 “systems” include, without limitation, windows, window
15 assemblies, framing, substrate, flashings, and trim, if any.

16 (4) Roofs, roofing systems, chimney caps, and ventilation
17 components shall not allow water to enter the structure or to pass
18 beyond, around, or through the designed or actual moisture
19 barriers, including, without limitation, internal barriers located
20 within the systems themselves. For purposes of this paragraph,
21 “systems” include, without limitation, framing, substrate, and
22 sheathing, if any.

23 (5) Decks, deck systems, balconies, balcony systems, exterior
24 stairs, and stair systems shall not allow water to pass into the
25 adjacent structure. For purposes of this paragraph, “systems”
26 include, without limitation, framing, substrate, flashing, and
27 sheathing, if any.

28 (6) Decks, deck systems, balconies, balcony systems, exterior
29 stairs, and stair systems shall not allow unintended water to pass
30 within the systems themselves and cause damage to the systems.
31 For purposes of this paragraph, “systems” include, without
32 limitation, framing, substrate, flashing, and sheathing, if any.

33 (7) Foundation systems and slabs shall not allow water or
34 vapor to enter into the structure so as to cause damage to another
35 building component.

36 (8) Foundation systems and slabs shall not allow water or
37 vapor to enter into the structure so as to limit the installation of
38 the type of flooring materials typically used for the particular
39 application.

1 (9) Hardscape, including paths and patios, irrigation systems,
2 landscaping systems, and drainage systems, that are installed as
3 part of the original construction, shall not be installed in such a
4 way as to cause water or soil erosion to enter into or come in
5 contact with the structure so as to cause damage to another
6 building component.

7 (10) Stucco, exterior siding, exterior walls, including, without
8 limitation, exterior framing, and other exterior wall finishes and
9 fixtures and the systems of those components and fixtures,
10 including, but not limited to, pot shelves, horizontal surfaces,
11 columns, and plant-ons, shall be installed in such a way so as not
12 to allow unintended water to pass into the structure or to pass
13 beyond, around, or through the designed or actual moisture
14 barriers of the system, including any internal barriers located
15 within the system itself. For purposes of this paragraph,
16 “systems” include, without limitation, framing, substrate,
17 flashings, trim, wall assemblies, and internal wall cavities, if any.

18 (11) Stucco, exterior siding, and exterior walls shall not allow
19 excessive condensation to enter the structure and cause damage
20 to another component. For purposes of this paragraph, “systems”
21 include, without limitation, framing, substrate, flashings, trim,
22 wall assemblies, and internal wall cavities, if any.

23 (12) Retaining and site walls and their associated drainage
24 systems shall not allow unintended water to pass beyond, around,
25 or through its designed or actual moisture barriers including,
26 without limitation, any internal barriers, so as to cause damage.
27 This standard does not apply to those portions of any wall or
28 drainage system that are designed to have water flow beyond,
29 around, or through them.

30 (13) Retaining walls and site walls, and their associated
31 drainage systems, shall only allow water to flow beyond, around,
32 or through the areas designated by design.

33 (14) The lines and components of the plumbing system, sewer
34 system, and utility systems shall not leak.

35 (15) Plumbing lines, sewer lines, and utility lines shall not
36 corrode so as to impede the useful life of the systems.

37 (16) Sewer systems shall be installed in such a way as to allow
38 the designated amount of sewage to flow through the system.

1 (17) Showers, baths, and related waterproofing systems shall
2 not leak water into the interior of walls, flooring systems, or the
3 interior of other components.

4 (18) The waterproofing system behind or under ceramic tile
5 and tile countertops shall not allow water into the interior of
6 walls, flooring systems, or other components so as to cause
7 damage. Ceramic tile systems shall be designed and installed so
8 as to deflect intended water to the waterproofing system.

9 (b) With respect to structural issues:

10 (1) Foundations, load bearing components, and slabs, shall not
11 contain significant cracks or significant vertical displacement.

12 (2) Foundations, load bearing components, and slabs shall not
13 cause the structure, in whole or in part, to be structurally unsafe.

14 (3) Foundations, load bearing components, and slabs, and
15 underlying soils shall be constructed so as to materially comply
16 with the design criteria set by applicable government building
17 codes, regulations, and ordinances for chemical deterioration or
18 corrosion resistance in effect at the time of original construction.

19 (4) A structure shall be constructed so as to materially comply
20 with the design criteria for earthquake and wind load resistance,
21 as set forth in the applicable government building codes,
22 regulations, and ordinances in effect at the time of original
23 construction.

24 (c) With respect to soil issues:

25 (1) Soils and engineered retaining walls shall not cause, in
26 whole or in part, damage to the structure built upon the soil or
27 engineered retaining wall.

28 (2) Soils and engineered retaining walls shall not cause, in
29 whole or in part, the structure to be structurally unsafe.

30 (3) Soils shall not cause, in whole or in part, the land upon
31 which no structure is built to become unusable for the purpose
32 represented at the time of original sale by the builder or for the
33 purpose for which that land is commonly used.

34 (d) With respect to fire protection issues:

35 (1) A structure shall be constructed so as to materially comply
36 with the design criteria of the applicable government building
37 codes, regulations, and ordinances for fire protection of the
38 occupants in effect at the time of the original construction.

39 (2) Fireplaces, chimneys, chimney structures, and chimney
40 termination caps shall be constructed and installed in such a way

1 so as not to cause an unreasonable risk of fire outside the
2 fireplace enclosure or chimney.

3 (3) Electrical and mechanical systems shall be constructed and
4 installed in such a way so as not to cause an unreasonable risk of
5 fire.

6 (e) With respect to plumbing and sewer issues:

7 Plumbing and sewer systems shall be installed to operate
8 properly and shall not materially impair the use of the structure
9 by its inhabitants. However, no action may be brought for a
10 violation of this subdivision more than four years after close of
11 escrow.

12 (f) With respect to electrical system issues:

13 Electrical systems shall operate properly and shall not
14 materially impair the use of the structure by its inhabitants.
15 However, no action shall be brought pursuant to this subdivision
16 more than four years from close of escrow.

17 (g) With respect to issues regarding other areas of
18 construction:

19 (1) Exterior pathways, driveways, hardscape, sidewalls,
20 sidewalks, and patios installed by the original builder shall not
21 contain cracks that display significant vertical displacement or
22 that are excessive. However, no action shall be brought upon a
23 violation of this paragraph more than four years from close of
24 escrow.

25 (2) Stucco, exterior siding, and other exterior wall finishes and
26 fixtures, including, but not limited to, pot shelves, horizontal
27 surfaces, columns, and plant-ons, shall not contain significant
28 cracks or separations.

29 (3) (A) To the extent not otherwise covered by these
30 standards, manufactured products, including, but not limited to,
31 windows, doors, roofs, plumbing products and fixtures,
32 fireplaces, electrical fixtures, HVAC units, countertops, cabinets,
33 paint, and appliances shall be installed so as not to interfere with
34 the products' useful life, if any.

35 (B) For purposes of this paragraph, "useful life" means a
36 representation of how long a product is warranted or represented,
37 through its limited warranty or any written representations, to last
38 by its manufacturer, including recommended or required
39 maintenance. If there is no representation by a manufacturer, a

1 builder shall install manufactured products so as not to interfere
2 with the product's utility.

3 (C) For purposes of this paragraph, "manufactured product"
4 means a product that is completely manufactured offsite.

5 (D) If no useful life representation is made, or if the
6 representation is less than one year, the period shall be no less
7 than one year. If a manufactured product is damaged as a result
8 of a violation of these standards, damage to the product is a
9 recoverable element of damages. This subparagraph does not
10 limit recovery if there has been damage to another building
11 component caused by a manufactured product during the
12 manufactured product's useful life.

13 (E) This title does not apply in any action seeking recovery
14 solely for a defect in a manufactured product located within or
15 adjacent to a structure.

16 (4) Heating, if any, shall be installed so as to be capable of
17 maintaining a room temperature of 70 degrees Fahrenheit at a
18 point three feet above the floor in any living space.

19 (5) Living space air-conditioning, if any, shall be provided in
20 a manner consistent with the size and efficiency design criteria
21 specified in Title 24 of the California Code of Regulations or its
22 successor.

23 (6) Attached structures shall be constructed to comply with
24 interunit noise transmission standards set by the applicable
25 government building codes, ordinances, or regulations in effect at
26 the time of the original construction. If there is no applicable
27 code, ordinance, or regulation, this paragraph does not apply.
28 However, no action shall be brought pursuant to this paragraph
29 more than one year from the original occupancy of the adjacent
30 unit.

31 (7) Irrigation systems and drainage shall operate properly so as
32 not to damage landscaping or other external improvements.
33 However, no action shall be brought pursuant to this paragraph
34 more than one year from close of escrow.

35 (8) Untreated wood posts shall not be installed in contact with
36 soil so as to cause unreasonable decay to the wood based upon
37 the finish grade at the time of original construction. However, no
38 action shall be brought pursuant to this paragraph more than two
39 years from close of escrow.

1 (9) Untreated steel fences and adjacent components shall be
2 installed so as to prevent unreasonable corrosion. However, no
3 action shall be brought pursuant to this paragraph more than four
4 years from close of escrow.

5 (10) Paint and stains shall be applied in such a manner so as
6 not to cause deterioration of the building surfaces for the length
7 of time specified by the paint or stain manufacturers'
8 representations, if any. However, no action shall be brought
9 pursuant to this paragraph more than five years from close of
10 escrow.

11 (11) Roofing materials shall be installed so as to avoid
12 materials falling from the roof.

13 (12) The landscaping systems shall be installed in such a
14 manner so as to survive for not less than one year. However, no
15 action shall be brought pursuant to this paragraph more than two
16 years from close of escrow.

17 (13) Ceramic tile and tile backing shall be installed in such a
18 manner that the tile does not detach.

19 (14) Dryer ducts shall be installed and terminated pursuant to
20 manufacturer installation requirements. However, no action shall
21 be brought pursuant to this paragraph more than two years from
22 close of escrow.

23 (15) Structures shall be constructed in such a manner so as not
24 to impair the occupants' safety because they contain public
25 health hazards as determined by a duly authorized public health
26 official, health agency, or governmental entity having
27 jurisdiction. This paragraph does not limit recovery for any
28 damages caused by a violation of any other paragraph of this
29 section on the grounds that the damages do not constitute a health
30 hazard.

31 SEC. 3. Section 2982 of the Civil Code, as amended by
32 Section 3 of Chapter 128 of the Statutes of 2005, is amended to
33 read:

34 2982. A conditional sale contract subject to this chapter shall
35 contain the disclosures required by Regulation Z, whether or not
36 Regulation Z applies to the transaction. In addition, to the extent
37 applicable, the contract shall contain the other disclosures and
38 notices required by, and shall satisfy the requirements and
39 limitations of, this section. The disclosures required by
40 subdivision (a) may be itemized or subtotaled to a greater extent

1 than as required by that subdivision and shall be made together
2 and in the sequence set forth in that subdivision. All other
3 disclosures and notices may appear in the contract in any location
4 or sequence and may be combined or interspersed with other
5 provisions of the contract.

6 (a) The contract shall contain the following disclosures, as
7 applicable, which shall be labeled “itemization of the amount
8 financed:”

9 (1) (A) The cash price, exclusive of document preparation
10 fees, business partnership automation fees, taxes imposed on the
11 sale, pollution control certification fees, prior credit or lease
12 balance on property being traded in, the amount charged for a
13 service contract, the amount charged for a theft deterrent system,
14 the amount charged for a surface protection product, the amount
15 charged for an optional debt cancellation agreement, and the
16 amount charged for a contract cancellation option agreement.

17 (B) The fee to be retained by the seller for document
18 preparation.

19 (C) The fee charged by the seller for certifying that the motor
20 vehicle complies with applicable pollution control requirements.

21 (D) A charge for a theft deterrent device.

22 (E) A charge for a surface protection product.

23 (F) Taxes imposed on the sale.

24 (G) The amount of any optional business partnership
25 automation fee to register or transfer the vehicle, which shall be
26 labeled “Optional DMV Electronic Filing Fee.”

27 (H) The amount charged for a service contract.

28 (I) The prior credit or lease balance remaining on property
29 being traded in, as required by paragraph (6). The disclosure
30 required by this subparagraph shall be labeled “prior credit or
31 lease balance (see downpayment and trade-in calculation).”

32 (J) Any charge for an optional debt cancellation agreement.

33 (K) Any charge for a used vehicle contract cancellation option
34 agreement.

35 (L) The total cash price, which is the sum of subparagraphs
36 (A) to (K), inclusive.

37 (M) The disclosures described in subparagraphs (D), (E), and
38 (K) are not required on contracts involving the sale of a
39 motorcycle, as defined in Section 400 of the Vehicle Code, or on
40 contracts involving the sale of an off-highway motor vehicle that

1 is subject to identification under Section 38010 of the Vehicle
2 Code, and the amounts of those charges, if any, are not required
3 to be reflected in the total price under subparagraph (L).

4 (2) Amounts paid to public officials for the following:

5 (A) Vehicle license fees.

6 (B) Registration, transfer, and titling fees.

7 (C) California tire fees imposed pursuant to Section 42885 of
8 the Public Resources Code.

9 (3) The aggregate amount of premiums agreed, upon
10 execution of the contract, to be paid for policies of insurance
11 included in the contract, excluding the amount of any insurance
12 premium included in the finance charge.

13 (4) The amount of the state fee for issuance of a certificate of
14 compliance, noncompliance, exemption, or waiver pursuant to
15 any applicable pollution control statute.

16 (5) A subtotal representing the sum of the foregoing items.

17 (6) The amount of the buyer's downpayment itemized to show
18 the following:

19 (A) The agreed value of the property being traded in.

20 (B) The prior credit or lease balance, if any, owing on the
21 property being traded in.

22 (C) The net agreed value of the property being traded in,
23 which is the difference between the amounts disclosed in
24 subparagraphs (A) and (B). If the prior credit or lease balance of
25 the property being traded in exceeds the agreed value of the
26 property, a negative number shall be stated.

27 (D) The amount of any portion of the downpayment to be
28 deferred until not later than the due date of the second regularly
29 scheduled installment under the contract and that is not subject to
30 a finance charge.

31 (E) The amount of any manufacturer's rebate applied or to be
32 applied to the downpayment.

33 (F) The remaining amount paid or to be paid by the buyer as a
34 downpayment.

35 (G) The total downpayment. If the sum of subparagraphs (C)
36 to (F), inclusive, is zero or more, that sum shall be stated as the
37 total downpayment and no amount shall be stated as the prior
38 credit or lease balance under subparagraph (I) of paragraph (1). If
39 the sum of subparagraphs (C) to (F), inclusive, is less than zero,
40 then that sum, expressed as a positive number, shall be stated as

1 the prior credit or lease balance under subparagraph (I) of
2 paragraph (1), and zero shall be stated as the total downpayment.
3 The disclosure required by this subparagraph shall be labeled
4 “total downpayment” and shall contain a descriptor indicating
5 that if the total downpayment is a negative number, a zero shall
6 be disclosed as the total downpayment and a reference made that
7 the remainder shall be included in the disclosure required
8 pursuant to subparagraph (I) of paragraph (1).

9 (7) The amount of any administrative finance charge, labeled
10 “prepaid finance charge.”

11 (8) The difference between item (5) and the sum of items (6)
12 and (7), labeled “amount financed.”

13 (b) No particular terminology is required to disclose the items
14 set forth in subdivision (a) except as expressly provided in that
15 subdivision.

16 (c) If payment of all or a portion of the downpayment is to be
17 deferred, the deferred payment shall be reflected in the payment
18 schedule disclosed pursuant to Regulation Z.

19 (d) If the downpayment includes property being traded in, the
20 contract shall contain a brief description of that property.

21 (e) The contract shall contain the names and addresses of all
22 persons to whom the notice required under Section 2983.2 and
23 permitted under Sections 2983.5 and 2984 is to be sent.

24 (f) (1) If the contract includes a finance charge determined on
25 the precomputed basis, the contract shall identify the method of
26 computing the unearned portion of the finance charge in the
27 event of prepayment in full of the buyer’s obligation and contain
28 a statement of the amount or method of computation of any
29 charge that may be deducted from the amount of any unearned
30 finance charge in computing the amount that will be credited to
31 the obligation or refunded to the buyer. The method of
32 computing the unearned portion of the finance charge shall be
33 sufficiently identified with a reference to the actuarial method if
34 the computation will be under that method. The method of
35 computing the unearned portion of the finance charge shall be
36 sufficiently identified with a reference to the Rule of 78’s, the
37 sum of the digits, or the sum of the periodic time balances
38 method in all other cases, and those references shall be deemed
39 to be equivalent for disclosure purposes.

1 (2) If the contract includes a finance charge that is determined
2 on the simple-interest basis but provides for a minimum finance
3 charge in the event of prepayment in full, the contract shall
4 contain a statement of that fact and the amount of the minimum
5 finance charge or its method of calculation.

6 (g) (1) If the contract includes a finance charge that is
7 determined on the precomputed basis and provides that the
8 unearned portion of the finance charge to be refunded upon full
9 prepayment of the contract is to be determined by a method other
10 than actuarial, the contract shall contain a notice, in at least
11 10-point boldface type if the contract is printed, reading as
12 follows: "Notice to buyer: (1) Do not sign this agreement before
13 you read it or if it contains any blank spaces to be filled in. (2)
14 You are entitled to a completely filled-in copy of this agreement.
15 (3) You can prepay the full amount due under this agreement at
16 any time and obtain a partial refund of the finance charge if it is
17 \$1 or more. Because of the way the amount of this refund will be
18 figured, the time when you prepay could increase the ultimate
19 cost of credit under this agreement. (4) If you default in the
20 performance of your obligations under this agreement, the
21 vehicle may be repossessed and you may be subject to suit and
22 liability for the unpaid indebtedness evidenced by this
23 agreement."

24 (2) If the contract includes a finance charge that is determined
25 on the precomputed basis and provides for the actuarial method
26 for computing the unearned portion of the finance charge upon
27 prepayment in full, the contract shall contain a notice, in at least
28 10-point boldface type if the contract is printed, reading as
29 follows: "Notice to buyer: (1) Do not sign this agreement before
30 you read it or if it contains any blank spaces to be filled in. (2)
31 You are entitled to a completely filled-in copy of this agreement.
32 (3) You can prepay the full amount due under this agreement at
33 any time and obtain a partial refund of the finance charge if it is
34 \$1 or more. (4) If you default in the performance of your
35 obligations under this agreement, the vehicle may be repossessed
36 and you may be subject to suit and liability for the unpaid
37 indebtedness evidenced by this agreement."

38 (3) If the contract includes a finance charge that is determined
39 on the simple-interest basis, the contract shall contain a notice, in
40 at least 10-point boldface type if the contract is printed, reading

1 as follows: “Notice to buyer: (1) Do not sign this agreement
2 before you read it or if it contains any blank spaces to be filled in.
3 (2) You are entitled to a completely filled-in copy of this
4 agreement. (3) You can prepay the full amount due under this
5 agreement at any time. (4) If you default in the performance of
6 your obligations under this agreement, the vehicle may be
7 repossessed and you may be subject to suit and liability for the
8 unpaid indebtedness evidenced by this agreement.”

9 (h) The contract shall contain a notice in at least 8-point
10 boldface type, acknowledged by the buyer, that reads as follows:

11
12 “If you have a complaint concerning this sale, you should try to
13 resolve it with the seller.

14 Complaints concerning unfair or deceptive practices or
15 methods by the seller may be referred to the city attorney, the
16 district attorney, or an investigator for the Department of Motor
17 Vehicles, or any combination thereof.

18 After this contract is signed, the seller may not change the
19 financing or payment terms unless you agree in writing to the
20 change. You do not have to agree to any change, and it is an
21 unfair or deceptive practice for the seller to make a unilateral
22 change.

23
24 _____
25 Buyer’s Signature”
26

27 (i) (1) The contract shall contain an itemization of any
28 insurance included as part of the amount financed disclosed
29 pursuant to paragraph (3) of subdivision (a) and of any insurance
30 included as part of the finance charge. The itemization shall
31 identify the type of insurance coverage and the premium charged
32 therefor, and, if the insurance expires before the date of the last
33 scheduled installment included in the repayment schedule, the
34 term of the insurance shall be stated.

35 (2) If any charge for insurance, other than for credit life or
36 disability, is included in the contract balance and disbursement of
37 any part thereof is to be made more than one year after the date
38 of the conditional sale contract, any finance charge on the
39 amount to be disbursed after one year shall be computed from the

1 month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) Except for contracts in which the finance charge or portion thereof is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars (\$2,500), the dollar amount of the disclosed finance charge may not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars (\$225), 1 ½ percent on so much of the unpaid balance in excess of two hundred twenty-five dollars (\$225) as does not exceed nine hundred dollars (\$900) and five-sixths of 1 percent on so much of the unpaid balance in excess of nine hundred dollars (\$900) as does not exceed two thousand five hundred dollars (\$2,500).

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment.

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars (\$25).

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars (\$25) if the unpaid balance does not exceed one thousand dollars (\$1,000).

(ii) Fifty dollars (\$50) if the unpaid balance exceeds one thousand dollars (\$1,000) but does not exceed two thousand dollars (\$2,000).

(iii) Seventy-five dollars (\$75) if the unpaid balance exceeds two thousand dollars (\$2,000).

(2) The holder of the contract may not charge, collect, or receive a finance charge that exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract that provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3),

1 or (4) of subdivision (c) of Section 226.17 of Regulation Z, or
2 (C) permitted by subdivisions (a) and (c) of Section 2982.8.

3 (3) If the finance charge or a portion thereof is determined by
4 the simple-interest basis and the amount of the unpaid balance
5 exceeds five thousand dollars (\$5,000), the holder of the contract
6 may, in lieu of its right to a minimum finance charge under
7 subparagraph (C) of paragraph (1), charge, receive, or collect on
8 the date of the contract an administrative finance charge not to
9 exceed seventy-five dollars (\$75), provided that the sum of the
10 administrative finance charge and the portion of the finance
11 charge determined by the simple-interest basis shall not exceed
12 the maximum total finance charge permitted by subparagraph (A)
13 of paragraph (1). Any administrative finance charge that is
14 charged, received, or collected by a holder shall be deemed a
15 finance charge earned on the date of the contract.

16 (4) If a contract provides for unequal or irregular payments, or
17 payments on other than a monthly basis, the maximum finance
18 charge shall be at the effective rate provided for in paragraph (1),
19 having due regard for the schedule of installments.

20 (k) The contract may provide that for each installment in
21 default for a period of not less than 10 days the buyer shall pay a
22 delinquency charge in an amount not to exceed in the aggregate 5
23 percent of the delinquent installment, which amount may be
24 collected only once on any installment regardless of the period
25 during which it remains in default. Payments timely received by
26 the seller under an extension or deferral agreement may not be
27 subject to a delinquency charge unless the charge is permitted by
28 Section 2982.3. The contract may provide for reasonable
29 collection costs and fees in the event of delinquency.

30 (l) Notwithstanding any provision of a contract to the contrary,
31 the buyer may pay at any time before maturity the entire
32 indebtedness evidenced by the contract without penalty. In the
33 event of prepayment in full:

34 (1) If the finance charge was determined on the precomputed
35 basis, the amount required to prepay the contract shall be the
36 outstanding contract balance as of that date, provided, however,
37 that the buyer shall be entitled to a refund credit in the amount of
38 the unearned portion of the finance charge, except as provided in
39 paragraphs (3) and (4). The amount of the unearned portion of
40 the finance charge shall be at least as great a proportion of the

1 finance charge, including any additional finance charge imposed
2 pursuant to Section 2982.8 or other additional charge imposed
3 because the contract has been extended, deferred, or refinanced,
4 as the sum of the periodic monthly time balances payable more
5 than 15 days after the date of prepayment bears to the sum of all
6 the periodic monthly time balances under the schedule of
7 installments in the contract or, if the contract has been extended,
8 deferred, or refinanced, as so extended, deferred, or refinanced. If
9 the amount of the refund credit is less than one dollar (\$1), no
10 refund credit need be made by the holder. Any refund credit may
11 be made in cash or credited to the outstanding obligations of the
12 buyer under the contract.

13 (2) If the finance charge or a portion thereof was determined
14 on the simple-interest basis, the amount required to prepay the
15 contract shall be the outstanding contract balance as of that date,
16 including any earned finance charges that are unpaid as of that
17 date and, if applicable, the amount provided in paragraph (3), and
18 provided further that in cases where a finance charge is
19 determined on the 360-day basis, the payments theretofore
20 received will be assumed to have been received on their
21 respective due dates regardless of the actual dates on which the
22 payments were received.

23 (3) Where the minimum finance charge provided by
24 subparagraph (B) or subparagraph (C) of paragraph (1) of
25 subdivision (j), if either is applicable, is greater than the earned
26 finance charge as of the date of prepayment, the holder shall be
27 additionally entitled to the difference.

28 (4) The provisions of this subdivision may not impair the right
29 of the seller or the seller's assignee to receive delinquency
30 charges on delinquent installments and reasonable costs and fees
31 as provided in subdivision (k) or extension or deferral agreement
32 charges as provided in Section 2982.3.

33 (5) Notwithstanding any provision of a contract to the
34 contrary, whenever the indebtedness created by any contract is
35 satisfied prior to its maturity through surrender of the motor
36 vehicle, repossession of the motor vehicle, redemption of the
37 motor vehicle after repossession, or any judgment, the
38 outstanding obligation of the buyer shall be determined as
39 provided in paragraph (1) or (2). Notwithstanding, the buyer's
40 outstanding obligation shall be computed by the holder as of the

1 date the holder recovers the value of the motor vehicle through
2 disposition thereof or judgment is entered or, if the holder elects
3 to keep the motor vehicle in satisfaction of the buyer's
4 indebtedness, as of the date the holder takes possession of the
5 motor vehicle.

6 (m) Notwithstanding any other provision of this chapter to the
7 contrary, any information required to be disclosed in a
8 conditional sale contract under this chapter may be disclosed in
9 any manner, method, or terminology required or permitted under
10 Regulation Z, as in effect at the time that disclosure is made,
11 except that permitted by paragraph (2) of subdivision (c) of
12 Section 226.18 of Regulation Z, provided that all of the
13 requirements and limitations set forth in subdivision (a) of this
14 section are satisfied. This chapter does not prohibit the disclosure
15 in that contract of additional information required or permitted
16 under Regulation Z, as in effect at the time that disclosure is
17 made.

18 (n) If the seller imposes a fee for document preparation, the
19 contract shall contain a disclosure that the fee is not a
20 governmental fee.

21 (o) A seller may not impose an application fee for a
22 transaction governed by this chapter.

23 (p) The seller or holder may charge and collect a fee not to
24 exceed fifteen dollars (\$15) for the return by a depository
25 institution of a dishonored check, negotiated order of withdrawal,
26 or share draft issued in connection with the contract, if the
27 contract so provides or if the contract contains a generalized
28 statement that the buyer may be liable for collection costs
29 incurred in connection with the contract.

30 (q) The contract shall disclose on its face, by printing the word
31 "new" or "used" within a box outlined in red, that is not smaller
32 than one-half inch high and one-half inch wide, whether the
33 vehicle is sold as a new vehicle, as defined in Section 430 of the
34 Vehicle Code, or as a used vehicle, as defined in Section 665 of
35 the Vehicle Code.

36 (r) The contract shall contain a notice with a heading in at least
37 12-point bold type and the text in at least 10-point bold type,
38 circumscribed by a line, immediately above the contract
39 signature line, that reads as follows:

1 THERE IS NO COOLING-OFF PERIOD UNLESS YOU
2 OBTAIN A CONTRACT CANCELLATION OPTION.

3
4 California law does not provide for a “cooling-off” or other
5 cancellation period for vehicle sales. Therefore, you cannot later cancel
6 this contract simply because you change your mind, decide the vehicle
7 costs too much, or wish you had acquired a different vehicle. After you
8 sign below, you may only cancel this contract with the agreement of the
9 seller or for legal cause, such as fraud.

10 However, California law does require a seller to offer a 2-day contract
11 cancellation option on used vehicles with a purchase price of less than
12 \$40,000, subject to certain statutory conditions. This contract
13 cancellation option requirement does not apply to the sale of a
14 recreational vehicle, a motorcycle, or an off-highway motor vehicle
15 subject to identification under California law. See the vehicle contract
16 cancellation option agreement for details.

17
18 SEC. 4. Section 170.3 of the Code of Civil Procedure is
19 amended to read:

20 170.3. (a) (1) If a judge determines himself or herself to be
21 disqualified, the judge shall notify the presiding judge of the
22 court of his or her recusal and shall not further participate in the
23 proceeding, except as provided in Section 170.4, unless his or her
24 disqualification is waived by the parties as provided in
25 subdivision (b).

26 (2) If the judge disqualifying himself or herself is the only
27 judge or the presiding judge of the court, the notification shall be
28 sent to the person having authority to assign another judge to
29 replace the disqualified judge.

30 (b) (1) A judge who determines himself or herself to be
31 disqualified after disclosing the basis for his or her
32 disqualification on the record may ask the parties and their
33 attorneys whether they wish to waive the disqualification, except
34 where the basis for disqualification is as provided in paragraph
35 (2). A waiver of disqualification shall recite the basis for the
36 disqualification, and is effective only when signed by all parties
37 and their attorneys and filed in the record.

38 (2) There shall be no waiver of disqualification if the basis
39 therefor is either of the following:

1 (A) The judge has a personal bias or prejudice concerning a
2 party.

3 (B) The judge served as an attorney in the matter in
4 controversy, or the judge has been a material witness concerning
5 that matter.

6 (3) The judge shall not seek to induce a waiver and shall avoid
7 any effort to discover which lawyers or parties favored or
8 opposed a waiver of disqualification.

9 (4) If grounds for disqualification are first learned of or arise
10 after the judge has made one or more rulings in a proceeding, but
11 before the judge has completed judicial action in a proceeding,
12 the judge shall, unless the disqualification be waived, disqualify
13 himself or herself, but in the absence of good cause the rulings he
14 or she has made up to that time shall not be set aside by the judge
15 who replaces the disqualified judge.

16 (c) (1) If a judge who should disqualify himself or herself
17 refuses or fails to do so, any party may file with the clerk a
18 written verified statement objecting to the hearing or trial before
19 the judge and setting forth the facts constituting the grounds for
20 disqualification of the judge. The statement shall be presented at
21 the earliest practicable opportunity after discovery of the facts
22 constituting the ground for disqualification. Copies of the
23 statement shall be served on each party or his or her attorney who
24 has appeared and shall be personally served on the judge alleged
25 to be disqualified, or on his or her clerk, provided that the judge
26 is present in the courthouse or in chambers.

27 (2) Without conceding his or her disqualification, a judge
28 whose impartiality has been challenged by the filing of a written
29 statement may request any other judge agreed upon by the parties
30 to sit and act in his or her place.

31 (3) Within 10 days after the filing or service, whichever is
32 later, the judge may file a consent to disqualification in which
33 case the judge shall notify the presiding judge or the person
34 authorized to appoint a replacement of his or her recusal as
35 provided in subdivision (a), or the judge may file a written
36 verified answer admitting or denying any or all of the allegations
37 contained in the party's statement and setting forth any additional
38 facts material or relevant to the question of disqualification. The
39 clerk shall forthwith transmit a copy of the judge's answer to
40 each party or his or her attorney who has appeared in the action.

1 (4) A judge who fails to file a consent or answer within the
2 time allowed shall be deemed to have consented to his or her
3 disqualification and the clerk shall notify the presiding judge or
4 person authorized to appoint a replacement of the recusal as
5 provided in subdivision (a).

6 (5) A judge who refuses to recuse himself or herself shall not
7 pass upon his or her own disqualification or upon the sufficiency
8 in law, fact, or otherwise, of the statement of disqualification
9 filed by a party. In that case, the question of disqualification shall
10 be heard and determined by another judge agreed upon by all the
11 parties who have appeared or, in the event they are unable to
12 agree within five days of notification of the judge's answer, by a
13 judge selected by the chairperson of the Judicial Council, or if
14 the chairperson is unable to act, the vice chairperson. The clerk
15 shall notify the executive officer of the Judicial Council of the
16 need for a selection. The selection shall be made as expeditiously
17 as possible. No challenge pursuant to this subdivision or Section
18 170.6 may be made against the judge selected to decide the
19 question of disqualification.

20 (6) The judge deciding the question of disqualification may
21 decide the question on the basis of the statement of
22 disqualification and answer and any written arguments as the
23 judge requests, or the judge may set the matter for hearing as
24 promptly as practicable. If a hearing is ordered, the judge shall
25 permit the parties and the judge alleged to be disqualified to
26 argue the question of disqualification and shall for good cause
27 shown hear evidence on any disputed issue of fact. If the judge
28 deciding the question of disqualification determines that the
29 judge is disqualified, the judge hearing the question shall notify
30 the presiding judge or the person having authority to appoint a
31 replacement of the disqualified judge as provided in subdivision
32 (a).

33 (d) The determination of the question of the disqualification of
34 a judge is not an appealable order and may be reviewed only by a
35 writ of mandate from the appropriate court of appeal sought only
36 by the parties to the proceeding. The petition for the writ shall be
37 filed and served within 10 days after service of written notice of
38 entry of the court's order granting or denying a motion for
39 disqualification. If the notice of entry is served by mail, that time
40 shall be extended as provided in subdivision (a) of Section 1013.

1 ~~SEC. 5. Section 209 of the Code of Civil Procedure, as~~
2 ~~amended by Section 28 of Chapter 75 of the Statutes of 2005, is~~
3 ~~amended to read:~~

4 ~~209. (a) Any prospective trial juror who has been summoned~~
5 ~~for service, and who fails to attend as directed or to respond to~~
6 ~~the court or jury commissioner and to be excused from~~
7 ~~attendance, may be attached and compelled to attend. Following~~
8 ~~an order to show cause hearing, the court may find the~~
9 ~~prospective juror in contempt of court, punishable by fine,~~
10 ~~incarceration, or both, as otherwise provided by law.~~

11 ~~(b) In lieu of imposing sanctions for contempt as set forth in~~
12 ~~subdivision (a), the court may impose reasonable monetary~~
13 ~~sanctions, as provided in this subdivision, on a prospective juror~~
14 ~~who has not been excused pursuant to Section 204 after first~~
15 ~~providing the prospective juror with notice and an opportunity to~~
16 ~~be heard. If a juror fails to respond to the initial summons within~~
17 ~~12 months, the court may issue a second summons indicating that~~
18 ~~the person failed to appear in response to a previous summons~~
19 ~~and ordering the person to appear for jury duty. Upon the failure~~
20 ~~of the juror to appear in response to the second summons, the~~
21 ~~court may issue a failure to appear notice informing the person~~
22 ~~that failure to respond may result in the imposition of money~~
23 ~~sanctions. If the prospective juror does not attend the court within~~
24 ~~the time period as directed by the failure to appear notice, the~~
25 ~~court shall issue an order to show cause. Payment of monetary~~
26 ~~sanctions imposed pursuant to this subdivision does not relieve~~
27 ~~the person of his or her obligation to perform jury duty.~~

28 ~~(c) (1) The court may give notice of its intent to impose~~
29 ~~sanctions by either of the following means:~~

30 ~~(A) Verbally to a prospective juror appearing in person in~~
31 ~~open court.~~

32 ~~(B) The issuance on its own motion of an order to show cause~~
33 ~~requiring the prospective juror to demonstrate reasons for not~~
34 ~~imposing sanctions. The court may serve the order to show cause~~
35 ~~by certified or first-class mail.~~

36 ~~(2) The monetary sanctions imposed pursuant to subdivision~~
37 ~~(b) may not exceed two hundred fifty dollars (\$250) for the first~~
38 ~~violation, seven hundred fifty dollars (\$750) for the second~~
39 ~~violation, and one thousand five hundred dollars (\$1,500) for the~~
40 ~~third and any subsequent violation. Monetary sanctions may not~~

1 be imposed on a prospective juror more than once during a single
2 juror pool cycle. The prospective juror may be excused from
3 paying sanctions pursuant to subdivision (b) of Section 204 or in
4 the interests of justice. The full amount of any sanction paid shall
5 be deposited in a bank account established for this purpose by the
6 Administrative Office of the Courts and transmitted from that
7 account monthly to the Controller for deposit in the Trial Court
8 Trust Fund, as provided in Section 68085.1 of the Government
9 Code. It is the intent of the Legislature that the funds derived
10 from the monetary sanctions authorized in this section be
11 allocated, to the extent feasible, to the family courts and the civil
12 courts. The Judicial Council shall, by rule, provide for a
13 procedure by which a prospective juror against whom a sanction
14 has been imposed by default may move to set aside the default.

15 SEC. 6. Section 209 of the Code of Civil Procedure, as added
16 by Section 2 of Chapter 359 of the Statutes of 2003, is repealed.

17 SEC. 7. Section 335.1 of the Code of Civil Procedure is
18 amended to read:

19 335.1. Notwithstanding any other provision of law providing
20 for a shorter statute of limitations period, within two years: An
21 action for assault, battery, or injury to, or for the death of, an
22 individual caused by the wrongful act or neglect of another.

23 SEC. 8. Section 366.2 of the Code of Civil Procedure is
24 amended to read:

25 366.2. (a) If a person against whom an action may be
26 brought on a liability of the person, whether arising in contract,
27 tort, or otherwise, and whether accrued or not accrued, dies
28 before the expiration of the applicable limitations period, and the
29 cause of action survives, an action may be commenced within
30 two years after the date of death, and the limitations period that
31 would have been applicable does not apply.

32 (b) The limitations period provided in this section for
33 commencement of an action shall not be tolled or extended for
34 any reason except as provided in any of the following, where
35 applicable:

36 (1) Part 4 (commencing with Section 9000) of Division 7 of
37 the Probate Code (creditor claims in administration of estates of
38 decedents):

~~(2) Part 8 (commencing with Section 19000) of Division 9 of the Probate Code (payment of claims, debts, and expenses from revocable trust of deceased settlor).~~

~~(3) Part 3 (commencing with Section 21300) of Division 11 of the Probate Code (no contest clauses).~~

~~(e) This section applies to actions brought on liabilities of persons dying on or after January 1, 1993.~~

SEC. 5. Section 209 of the Code of Civil Procedure, as amended by Section 28 of Chapter 75 of the Statutes of 2005, is amended to read:

209. (a) Any prospective trial juror who has been summoned for service, and who fails to attend as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

(b) In lieu of imposing sanctions for contempt as set forth in subdivision (a), the court may impose reasonable monetary sanctions, as provided in this subdivision, on a prospective juror who has not been excused pursuant to Section 204 after first providing the prospective juror with notice and an opportunity to be heard. If a juror fails to respond to the initial summons within 12 months, the court may issue a second summons indicating that the person failed to appear in response to a previous summons and ordering the person to appear for jury duty. Upon the failure of the juror to appear in response to the second summons, the court may issue a failure to appear notice informing the person that failure to respond may result in the imposition of money sanctions. If the prospective juror does not attend the court within the time period as directed by the failure to appear notice, the court shall issue an order to show cause. Payment of monetary sanctions imposed pursuant to this subdivision does not relieve the person of his or her obligation to perform jury duty.

(c) (1) The court may give notice of its intent to impose sanctions by either of the following means:

(A) Verbally to a prospective juror appearing in person in open court.

(B) The issuance on its own motion of an order to show cause requiring the prospective juror to demonstrate reasons for not

1 imposing sanctions. The court may serve the order to show cause
2 by certified or first-class mail.

3 (2) The monetary sanctions imposed pursuant to subdivision
4 (b) may not exceed two hundred fifty dollars (\$250) for the first
5 violation, seven hundred fifty dollars (\$750) for the second
6 violation, and one thousand five hundred dollars (\$1,500) for the
7 third and any subsequent violation. Monetary sanctions may not
8 be imposed on a prospective juror more than once during a single
9 juror pool cycle. The prospective juror may be excused from
10 paying sanctions pursuant to subdivision (b) of Section 204 or in
11 the interests of justice. The full amount of any sanction paid shall
12 be deposited in a bank account established for this purpose by the
13 Administrative Office of the Courts and transmitted from that
14 account monthly to the Controller for deposit in the Trial Court
15 Trust Fund, as provided in Section 68085.1 of the Government
16 Code. It is the intent of the Legislature that the funds derived
17 from the monetary sanctions authorized in this section be
18 allocated, to the extent feasible, to the family courts and the civil
19 courts. The Judicial Council shall, by rule, provide for a
20 procedure by which a prospective juror against whom a sanction
21 has been imposed by default may move to set aside the default.

22 (d) On or before December 31, ~~2005~~ 2008, the Judicial
23 Council shall report to the Legislature regarding the effects of the
24 implementation of subdivisions (b) and (c). The report shall
25 include, but not be limited to, information regarding any change
26 in rates of response to juror summons, the amount of moneys
27 collected pursuant to subdivision (c), the efficacy of the default
28 procedures adopted in rules of court, and how, if at all, the
29 Legislature may wish to alter this chapter to further attainment of
30 its objectives.

31 (e) This section shall remain in effect only until January 1,
32 ~~2007~~ 2010, and as of that date is repealed, unless a later enacted
33 statute, that is enacted before January 1, ~~2007~~ 2010, deletes or
34 extends that date.

35 *SEC. 6. Section 209 of the Code of Civil Procedure, as added*
36 *by Section 2 of Chapter 359 of the Statutes of 2003, is amended*
37 *to read:*

38 209. Any prospective trial juror who has been summoned for
39 service, and who fails to attend the court as directed or to respond
40 to the court or jury commissioner and to be excused from

1 attendance, may be attached and compelled to attend. Following
2 an order to show cause hearing, the court may find the
3 prospective juror in contempt of court, punishable by fine,
4 incarceration, or both, as otherwise provided by law.

5 This section shall become operative on January 1, ~~2007~~ 2010.

6 ~~SEC. 9.~~

7 *SEC. 7.* Section 416.10 of the Code of Civil Procedure is
8 amended to read:

9 416.10. A summons may be served on a corporation by
10 delivering a copy of the summons and the complaint by any of
11 the following methods:

12 (a) To the person designated as agent for service of process as
13 provided by any provision in Section 202, 1502, 2105, or 2107 of
14 the Corporations Code (or Sections 3301 to 3303, inclusive, or
15 Sections 6500 to 6504, inclusive, of the Corporations Code, as in
16 effect on December 31, 1976, with respect to corporations to
17 which they remain applicable).

18 (b) To the president, chief executive officer, or other head of
19 the corporation, a vice president, a secretary or assistant
20 secretary, a treasurer or assistant treasurer, a controller or chief
21 financial officer, a general manager, or a person authorized by
22 the corporation to receive service of process.

23 (c) If the corporation is a bank, to a cashier or assistant cashier
24 or to a person specified in subdivision (a) or (b).

25 (d) If authorized by any provision in Section 1701, 1702,
26 2110, or 2111 of the Corporations Code (or Sections 3301 to
27 3303, inclusive, or Sections 6500 to 6504, inclusive, of the
28 Corporations Code, as in effect on December 31, 1976, with
29 respect to corporations to which they remain applicable), as
30 provided by that provision.

31 ~~SEC. 10.~~ ~~Section 488.080 of the Code of Civil Procedure is~~
32 ~~amended to read:~~

33 ~~488.080. (a) A registered process server may levy under a~~
34 ~~writ of attachment on the following types of property:~~

35 ~~(1) Real property, pursuant to Section 488.315.~~

36 ~~(2) Growing crops, timber to be cut, or minerals or the like~~
37 ~~(including oil and gas) to be extracted or accounts receivable~~
38 ~~resulting from the sale thereof at the wellhead or minehead,~~
39 ~~pursuant to Section 488.325.~~

1 ~~(3) Personal property in the custody of a levying officer,~~
2 ~~pursuant to Section 488.355.~~

3 ~~(4) Equipment of a going business, pursuant to Section~~
4 ~~488.375.~~

5 ~~(5) Motor vehicles, vessels, mobilehomes, or commercial~~
6 ~~coaches used as equipment of a going business, pursuant to~~
7 ~~Section 488.385.~~

8 ~~(6) Farm products or inventory of a going business, pursuant~~
9 ~~to Section 488.405.~~

10 ~~(7) Personal property used as a dwelling, pursuant to~~
11 ~~subdivision (a) of Section 700.080.~~

12 ~~(8) Deposit accounts, pursuant to Section 488.455.~~

13 ~~(9) Property in a safe-deposit box, pursuant to Section~~
14 ~~488.460.~~

15 ~~(10) Accounts receivable or general intangibles, pursuant to~~
16 ~~Section 488.470.~~

17 ~~(11) Final money judgments, pursuant to Section 488.480.~~

18 ~~(12) Interest of a defendant in personal property in the estate~~
19 ~~of a decedent, pursuant to Section 488.485.~~

20 ~~(b) Before levying under the writ of attachment, the registered~~
21 ~~process server shall deposit a copy of the writ with the levying~~
22 ~~officer and pay the fee provided by Section 26721 of the~~
23 ~~Government Code.~~

24 ~~(c) If a registered process server levies on property pursuant to~~
25 ~~subdivision (a), the registered process server shall do both of the~~
26 ~~following:~~

27 ~~(1) Comply with the applicable levy, posting, and service~~
28 ~~provisions of Article 2 (commencing with Section 488.300).~~

29 ~~(2) Request any third person served to give a garnishee's~~
30 ~~memorandum to the levying officer in compliance with Section~~
31 ~~488.610 on a form provided by the registered process server.~~

32 ~~(d) Within five court days after levy under this section, all of~~
33 ~~the following shall be filed with the levying officer:~~

34 ~~(1) The writ of attachment.~~

35 ~~(2) An affidavit of the registered process server stating the~~
36 ~~manner of levy performed.~~

37 ~~(3) Proof of service of the copy of the writ and notice of~~
38 ~~attachment on other persons as required by Article 2~~
39 ~~(commencing with Section 488.300).~~

~~(4) Instructions in writing, as required by the provisions of Section 488.030.~~

~~(e) If the fee provided by Section 26721 of the Government Code has been paid, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court. If the registered process server does not comply with subdivisions (b) and (d), the levy is ineffective and the levying officer is not required to perform any duties under the writ and may issue a release for any property sought to be attached. The levying officer is not liable for actions taken in conformance with the provisions of this title in reliance on information provided to the levying officer under subdivision (d) except to the extent that the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the plaintiff or registered process server may have if the levying officer acts on the basis of incorrect information provided under subdivision (d).~~

~~(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.~~

~~SEC. 11. Section 699.080 of the Code of Civil Procedure is amended to read:~~

~~699.080. (a) A registered process server may levy under a writ of execution on the following types of property:~~

~~(1) Real property, pursuant to Section 700.015.~~

~~(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.~~

~~(3) Personal property in the custody of a levying officer, pursuant to Section 700.050.~~

~~(4) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.~~

~~(5) Deposit accounts, pursuant to Section 700.140.~~

~~(6) Property in a safe-deposit box, pursuant to Section 700.150.~~

~~(7) Accounts receivable or general intangibles, pursuant to Section 700.170.~~

~~(8) Final money judgments, pursuant to Section 700.190.~~

1 ~~(9) Interest of a judgment debtor in personal property in the~~
2 ~~estate of a decedent, pursuant to Section 700.200.~~

3 ~~(b) Before levying under the writ of execution, the registered~~
4 ~~process server shall deposit a copy of the writ with the levying~~
5 ~~officer and pay the fee provided by Section 26721 of the~~
6 ~~Government Code.~~

7 ~~(c) If a registered process server levies on property pursuant to~~
8 ~~subdivision (a), the registered process server shall do both of the~~
9 ~~following:~~

10 ~~(1) Comply with the applicable levy, posting, and service~~
11 ~~provisions of Article 4 (commencing with Section 700.010).~~

12 ~~(2) Request any third person served to give a garnishee's~~
13 ~~memorandum to the levying officer in compliance with Section~~
14 ~~701.030 on a form provided by the registered process server.~~

15 ~~(d) Within five court days after levy under this section, all of~~
16 ~~the following shall be filed with the levying officer:~~

17 ~~(1) The writ of execution.~~

18 ~~(2) An affidavit of the registered process server stating the~~
19 ~~manner of levy performed.~~

20 ~~(3) Proof of service of the copy of the writ and notice of levy~~
21 ~~on other persons, as required by Article 4 (commencing with~~
22 ~~Section 700.010).~~

23 ~~(4) Instructions in writing, as required by the provisions of~~
24 ~~Section 687.010.~~

25 ~~(e) If the fee provided by Section 26721 of the Government~~
26 ~~Code has been paid, the levying officer shall perform all other~~
27 ~~duties under the writ as if the levying officer had levied under the~~
28 ~~writ and shall return the writ to the court. If the registered process~~
29 ~~server does not comply with subdivisions (b) and (d), the levy is~~
30 ~~ineffective and the levying officer is not required to perform any~~
31 ~~duties under the writ and may issue a release for any property~~
32 ~~sought to be levied upon.~~

33 ~~(f) The fee for services of a registered process server under~~
34 ~~this section shall be allowed as a recoverable cost pursuant to~~
35 ~~Section 1033.5.~~

36 ~~(g) A registered process server may levy more than once under~~
37 ~~the same writ of execution, provided that the writ is still valid.~~

38 ~~SEC. 12.~~

39 ~~SEC. 8.~~ Section 904.1 of the Code of Civil Procedure is
40 amended to read:

1 904.1. (a) An appeal, other than in a limited civil case, is to
2 the court of appeal. An appeal, other than in a limited civil case,
3 may be taken from any of the following:

4 (1) From a judgment, except (A) an interlocutory judgment,
5 other than as provided in paragraphs (8), (9), and (11), (B) a
6 judgment of contempt that is made final and conclusive by
7 Section 1222, or (C) a judgment granting or denying a petition
8 for issuance of a writ of mandamus or prohibition directed to a
9 municipal court or the superior court in a county in which there is
10 no municipal court or the judge or judges thereof that relates to a
11 matter pending in the municipal or superior court. However, an
12 appellate court may, in its discretion, review a judgment granting
13 or denying a petition for issuance of a writ of mandamus or
14 prohibition, or a judgment or order for the payment of monetary
15 sanctions, upon petition for an extraordinary writ.

16 (2) From an order made after a judgment made appealable by
17 paragraph (1).

18 (3) From an order granting a motion to quash service of
19 summons or granting a motion to stay the action on the ground of
20 inconvenient forum, or from a written order of dismissal under
21 Section 581d following an order granting a motion to dismiss the
22 action on the ground of inconvenient forum.

23 (4) From an order granting a new trial or denying a motion for
24 judgment notwithstanding the verdict.

25 (5) From an order discharging or refusing to discharge an
26 attachment or granting a right to attach order.

27 (6) From an order granting or dissolving an injunction, or
28 refusing to grant or dissolve an injunction.

29 (7) From an order appointing a receiver.

30 (8) From an interlocutory judgment, order, or decree, hereafter
31 made or entered in an action to redeem real or personal property
32 from a mortgage thereof, or a lien thereon, determining the right
33 to redeem and directing an accounting.

34 (9) From an interlocutory judgment in an action for partition
35 determining the rights and interests of the respective parties and
36 directing partition to be made.

37 (10) From an order made appealable by the provisions of the
38 Probate Code or the Family Code.

1 (11) From an interlocutory judgment directing payment of
2 monetary sanctions by a party or an attorney for a party if the
3 amount exceeds five thousand dollars (\$5,000).

4 (12) From an order directing payment of monetary sanctions
5 by a party or an attorney for a party if the amount exceeds five
6 thousand dollars (\$5,000).

7 (13) From an order granting or denying a special motion to
8 strike under Section 425.16.

9 (b) Sanction orders or judgments of five thousand dollars
10 (\$5,000) or less against a party or an attorney for a party may be
11 reviewed on an appeal by that party after entry of final judgment
12 in the main action, or, at the discretion of the court of appeal,
13 may be reviewed upon petition for an extraordinary writ.

14 ~~SEC. 13.~~

15 *SEC. 9.* Section 904.2 of the Code of Civil Procedure is
16 amended to read:

17 904.2. An appeal in a limited civil case is to the appellate
18 division of the superior court. An appeal in a limited civil case
19 may be taken from any of the following:

20 (a) From a judgment, except (1) an interlocutory judgment, or
21 (2) a judgment of contempt that is made final and conclusive by
22 Section 1222.

23 (b) From an order made after a judgment made appealable by
24 subdivision (a).

25 (c) From an order changing or refusing to change the place of
26 trial.

27 (d) From an order granting a motion to quash service of
28 summons or granting a motion to stay the action on the ground of
29 inconvenient forum, or from a written order of dismissal under
30 Section 581d following an order granting a motion to dismiss the
31 action on the ground of inconvenient forum.

32 (e) From an order granting a new trial or denying a motion for
33 judgment notwithstanding the verdict.

34 (f) From an order discharging or refusing to discharge an
35 attachment or granting a right to attach order.

36 (g) From an order granting or dissolving an injunction, or
37 refusing to grant or dissolve an injunction.

38 (h) From an order appointing a receiver.

1 ~~SEC. 14.~~

2 *SEC. 10.* Section 1276 of the Code of Civil Procedure is
3 amended to read:

4 1276. (a) All applications for change of names shall be made
5 to the superior court of the county where the person whose name
6 is proposed to be changed resides, except as specified in
7 subdivision (e), either (1) by petition signed by the person or, if
8 the person is under 18 years of age, either by one of the person's
9 parents, or by any guardian of the person, or if both parents are
10 dead and there is no guardian of the person, then by some near
11 relative or friend of the person or (2) as provided in Section 7638
12 of the Family Code.

13 The petition or pleading shall specify the place of birth and
14 residence of the person, his or her present name, the name
15 proposed, and the reason for the change of name.

16 (b) In a proceeding for a change of name commenced by the
17 filing of a petition, if the person whose name is to be changed is
18 under 18 years of age, the petition shall, if neither parent of the
19 person has signed the petition, name, as far as known to the
20 person proposing the name change, the parents of the person and
21 their place of residence, if living, or if neither parent is living,
22 near relatives of the person, and their place of residence.

23 (c) In a proceeding for a change of name commenced by the
24 filing of a petition, if the person whose name is proposed to be
25 changed is under 18 years of age and the petition is signed by
26 only one parent, the petition shall specify the address, if known,
27 of the other parent if living. If the petition is signed by a
28 guardian, the petition shall specify the name and address, if
29 known, of the parent or parents, if living, or the grandparents, if
30 the addresses of both parents are unknown or if both parents are
31 deceased, of the person whose name is proposed to be changed.

32 (d) In a proceeding for a change of name commenced by the
33 filing of a petition, if the person whose name is proposed to be
34 changed is 12 years of age or older, has been relinquished to an
35 adoption agency by his or her parent or parents, and has not been
36 legally adopted, the petition shall be signed by the person and the
37 adoption agency to which the person was relinquished. The near
38 relatives of the person and their place of residence shall not be
39 included in the petition unless they are known to the person
40 whose name is proposed to be changed.

1 (e) All petitions for the change of the name of a minor
2 submitted by a guardian appointed by the juvenile court or the
3 probate court shall be made in the appointing court.

4 (f) If the petition is signed by a guardian, the petition shall
5 specify relevant information regarding the guardianship, the
6 likelihood that the child will remain under the guardian's care
7 until the child reaches the age of majority, and information
8 suggesting that the child will not likely be returned to the custody
9 of his or her parents.

10 ~~SEC. 15.~~

11 *SEC. 11.* Section 1277 of the Code of Civil Procedure is
12 amended to read:

13 1277. (a) If a proceeding for a change of name is commenced
14 by the filing of a petition, except as provided in subdivisions (b)
15 and (e), the court shall thereupon make an order reciting the
16 filing of the petition, the name of the person by whom it is filed,
17 and the name proposed. The order shall direct all persons
18 interested in the matter to appear before the court at a time and
19 place specified, which shall be not less than six or more than 12
20 weeks from the time of making the order, unless the court orders
21 a different time, to show cause why the application for change of
22 name should not be granted. The order shall direct all persons
23 interested in the matter to make known any objection that they
24 may have to the granting of the petition for change of name by
25 filing a written objection, which includes the reasons for the
26 objection, with the court at least two court days before the matter
27 is scheduled to be heard and by appearing in court at the hearing
28 to show cause why the petition for change of name should not be
29 granted. The order shall state that, if no written objection is
30 timely filed, the court may grant the petition without a hearing.

31 A copy of the order to show cause shall be published pursuant
32 to Section 6064 of the Government Code in a newspaper of
33 general circulation to be designated in the order published in the
34 county. If no newspaper of general circulation is published in the
35 county, a copy of the order to show cause shall be posted by the
36 clerk of the court in three of the most public places in the county
37 in which the court is located, for a like period. Proof shall be
38 made to the satisfaction of the court of this publication or
39 posting, at the time of the hearing of the application.

1 Four weekly publications shall be sufficient publication of the
2 order to show cause. If the order is published in a daily
3 newspaper, publication once a week for four successive weeks
4 shall be sufficient.

5 If a petition has been filed for a minor by a parent and the other
6 parent, if living, does not join in consenting thereto, the petitioner
7 shall cause, not less than 30 days prior to the hearing, to be
8 served notice of the time and place of the hearing or a copy of the
9 order to show cause on the other parent pursuant to Section
10 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot
11 reasonably be accomplished pursuant to Section 415.10 or
12 415.40, the court may order that notice be given in a manner that
13 the court determines is reasonably calculated to give actual notice
14 to the nonconsenting parent. For good cause, the court may
15 determine that publication of the order to show cause pursuant to
16 this subdivision is sufficient notice to the nonconsenting parent.

17 (b) If the petition for a change of name alleges that the reason
18 for the petition is to avoid domestic violence, as defined in
19 Section 6211 of the Family Code, or stalking, as defined in
20 Section 646.9 of the Penal Code, and the petitioner is a
21 participant in the address confidentiality program created
22 pursuant to Chapter 3.1 (commencing with Section 6205) of
23 Division 7 of Title 1 of the Government Code, the petition, the
24 order of the court, and the copy published pursuant to subdivision
25 (a) shall, in lieu of reciting the proposed name, indicate that the
26 proposed name is confidential and will be on file with the
27 Secretary of State pursuant to the provisions of the address
28 confidentiality program.

29 (c) A proceeding for a change of name for a witness
30 participating in the state Witness Protection Program established
31 by Title 7.5 (commencing with Section 14020) of Part 4 of the
32 Penal Code who has been approved for the change of name by
33 the program is exempt from the requirement for publication of
34 the order to show cause under subdivision (a).

35 (d) If application for change of name is brought as part of an
36 action under the Uniform Parentage Act (Part 3 (commencing
37 with Section 7600) of Division 12 of the Family Code), whether
38 as part of a petition or cross-complaint or as a separate order to
39 show cause in a pending action thereunder, service of the
40 application shall be made upon all other parties to the action in a

1 like manner as prescribed for the service of a summons, as is set
2 forth in Article 3 (commencing with Section 415.10) of Chapter
3 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue,
4 notice of the hearing shall be given to all parties in the action in a
5 like manner and within the time limits prescribed generally for
6 the type of hearing (whether trial or order to show cause) at
7 which the issue of the change of name is to be decided.

8 (e) If a guardian files a petition to change the name of his or
9 her minor ward pursuant to Section 1276:

10 (1) The guardian shall provide notice of the hearing to any
11 living parent of the minor by personal service at least 30 days
12 prior to the hearing.

13 (2) If either or both parents are deceased or cannot be located,
14 the guardian shall cause, not less than 30 days prior to the
15 hearing, to be served a notice of the time and place of the hearing
16 or a copy of the order to show cause on the child's grandparents,
17 if living, pursuant to Section 413.10, 414.10, 415.10, or 415.40.

18 ~~SEC. 16.~~

19 *SEC. 12.* Section 1278 of the Code of Civil Procedure is
20 amended to read:

21 1278. (a) Except as provided in subdivisions (c) and (d), the
22 petition or application shall be heard at the time designated by
23 the court, only if objections are filed by any person who can, in
24 those objections, show to the court good reason against the
25 change of name. At the hearing, the court may examine on oath
26 any of the petitioners, remonstrants, or other persons, touching
27 the petition or application, and may make an order changing the
28 name, or dismissing the petition or application, as to the court
29 may seem right and proper.

30 If no objection is filed at least two court days before the date
31 set for hearing, the court may, without hearing, enter the order
32 that the change of name is granted.

33 (b) If the provisions of subdivision (b) of Section 1277 apply,
34 the court shall not disclose the proposed name unless the court
35 finds by clear and convincing evidence that the allegations of
36 domestic violence or stalking in the petition are false.

37 (c) If the application for a change of name is brought as part of
38 an action under the Uniform Parentage Act (Part 3 (commencing
39 with Section 7600) of Division 12 of the Family Code), the
40 hearing on the issue of the change of name shall be conducted

1 pursuant to statutes and rules of court governing those
2 proceedings, whether the hearing is conducted upon an order to
3 show cause or upon trial.

4 (d) If the petition for a change of name is filed by a guardian
5 on behalf of a minor ward, the court shall first find that the ward
6 is likely to remain in the guardian's care until the age of majority
7 and that the ward is not likely to be returned to the custody of his
8 or her parents. Upon making those findings, the court shall
9 consider the petition and may grant the petition only if it finds
10 that the proposed name change is in the best interest of the child.

11 ~~SEC. 17.~~

12 *SEC. 13.* Section 1278.5 of the Code of Civil Procedure is
13 amended to read:

14 1278.5. In any proceeding pursuant to this title in which a
15 petition has been filed to change the name of a minor, and both
16 parents, if living, do not join in consent, the court may deny the
17 petition in whole or in part if it finds that any portion of the
18 proposed name change is not in the best interest of the child.

19 ~~SEC. 18.~~

20 *SEC. 14.* Section 1279.5 of the Code of Civil Procedure is
21 amended to read:

22 1279.5. (a) Except as provided in subdivision (b), (c), (d), or
23 (e), nothing in this title shall be construed to abrogate the
24 common law right of any person to change his or her name.

25 (b) Notwithstanding any other law, no person imprisoned in
26 the state prison and under the jurisdiction of the Director of
27 Corrections shall be allowed to file a petition for change of name
28 pursuant to Section 1276, except as permitted at the discretion of
29 the Director of Corrections.

30 (c) A court shall deny a petition for a name change pursuant to
31 Section 1276 made by a person who is under the jurisdiction of
32 the Department of Corrections, unless that person's parole agent
33 or probation officer grants prior written approval. Before
34 granting that approval, the parole agent or probation officer shall
35 determine that the name change will not pose a security risk to
36 the community.

37 (d) Notwithstanding any other law, a court shall deny a
38 petition for a name change pursuant to Section 1276 made by a
39 person who is required to register as a sex offender under Section
40 290 of the Penal Code, unless the court determines that it is in the

1 best interest of justice to grant the petition and that doing so will
2 not adversely affect the public safety. If a petition for a name
3 change is granted for an individual required to register as a sex
4 offender, the individual shall, within five working days, notify
5 the chief of police of the city in which he or she is domiciled, or
6 the sheriff of the county if he or she is domiciled in an
7 unincorporated area, and additionally with the chief of police of
8 a campus of a University of California or California State
9 University if he or she is domiciled upon the campus or in any of
10 its facilities.

11 (e) For the purpose of this section, the court shall use the
12 California Law Enforcement Telecommunications System
13 (CLETS) and Criminal Justice Information System (CJIS) to
14 determine whether or not an applicant for a name change is under
15 the jurisdiction of the Department of Corrections or is required to
16 register as a sex offender pursuant to Section 290 of the Penal
17 Code. Each person applying for a name change shall declare
18 under penalty of perjury that he or she is not under the
19 jurisdiction of the Department of Corrections or is required to
20 register as a sex offender pursuant to Section 290 of the Penal
21 Code. If a court is not equipped with CLETS or CJIS, the clerk of
22 the court shall contact an appropriate local law enforcement
23 agency, which shall determine whether or not the petitioner is
24 under the jurisdiction of the Department of Corrections or is
25 required to register as a sex offender pursuant to Section 290 of
26 the Penal Code.

27 ~~SEC. 19.~~

28 *SEC. 15.* Section 9321 of the Commercial Code, as amended
29 by Section 4 of Chapter 235 of the Statutes of 2003, is amended
30 to read:

31 9321. (a) In this section, “licensee in ordinary course of
32 business” means a person that becomes a licensee of a general
33 intangible in good faith, without knowledge that the license
34 violates the rights of another person in the general intangible, and
35 in the ordinary course from a person in the business of licensing
36 general intangibles of that kind. A person becomes a licensee in
37 the ordinary course if the license to the person comports with the
38 usual or customary practices in the kind of business in which the
39 licensor is engaged or with the licensor’s own usual or customary
40 practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

~~SEC. 20.~~

SEC. 16. Section 9321 of the Commercial Code, as amended by Section 5 of Chapter 235 of the Statutes of 2003, is amended to read:

9321. (a) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(b) This section shall become operative on January 1, 2010.

~~SEC. 21.~~

SEC. 17. Section 5220 of the Corporations Code is amended to read:

5220. (a) Except as provided in subdivision (d), directors shall be elected for the terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold

1 office until the expiration of the term for which elected and until
2 a successor has been elected and qualified.

3 (c) The articles or bylaws may provide for the election of one
4 or more directors by the members of any class voting as a class.

5 (d) Subdivisions (a) through (c) notwithstanding, all or any
6 portion of the directors authorized in the articles or bylaws of a
7 corporation may hold office by virtue of designation or selection
8 as provided by the articles or bylaws rather than by election by a
9 member or members. Those directors shall continue in office for
10 the term prescribed by the governing article or bylaw provision,
11 or, if there is no term prescribed, until the governing article or
12 bylaw provision is duly amended or repealed, except as provided
13 in subdivision (e) of Section 5222. A bylaw provision authorized
14 by this subdivision may be adopted, amended, or repealed only
15 by approval of the members (Section 5034), subject, if so
16 provided in the bylaws, to the consent of the person or persons
17 entitled to designate or select the director or directors.

18 (e) If a corporation has not issued memberships and (1) all the
19 directors resign, die, or become incompetent, or (2) a
20 corporation's initial directors have not been named in the articles
21 and all incorporators resign, die, or become incompetent before
22 the election of the initial directors, the superior court of any
23 county may appoint directors of the corporation upon application
24 by any party in interest.

25 ~~SEC. 22.~~

26 *SEC. 18.* Section 2103 of the Family Code is amended to
27 read:

28 2103. In order to provide full and accurate disclosure of all
29 assets and liabilities in which one or both parties may have an
30 interest, each party who has appeared in a proceeding for
31 dissolution of the marriage or legal separation of the parties shall
32 serve on the other party a preliminary declaration of disclosure
33 under Section 2104 and a final declaration of disclosure under
34 Section 2105, unless service of the final declaration of disclosure
35 is waived pursuant to Section 2105 or 2110, and shall file proof
36 of service of each with the court.

37 ~~SEC. 23.~~

38 *SEC. 19.* Section 2104 of the Family Code is amended to
39 read:

1 2104. (a) Except by court order for good cause as provided in
2 Section 2107, after or concurrently with service of the petition
3 for dissolution or nullity of marriage or legal separation of the
4 parties, each party shall serve on the other party a preliminary
5 declaration of disclosure, executed under penalty of perjury on a
6 form prescribed by the Judicial Council. The commission of
7 perjury on the preliminary declaration of disclosure may be
8 grounds for setting aside the judgment, or any part or parts
9 thereof, pursuant to Chapter 10 (commencing with Section
10 2120), in addition to any and all other remedies, civil or criminal,
11 that otherwise are available under law for the commission of
12 perjury.

13 (b) The preliminary declaration of disclosure shall not be filed
14 with the court, except on court order. However, the parties shall
15 file proof of service of the preliminary declaration of disclosure
16 with the court.

17 (c) The preliminary declaration of disclosure shall set forth
18 with sufficient particularity, that a person of reasonable and
19 ordinary intelligence can ascertain, all of the following:

20 (1) The identity of all assets in which the declarant has or may
21 have an interest and all liabilities for which the declarant is or
22 may be liable, regardless of the characterization of the asset or
23 liability as community, quasi-community, or separate.

24 (2) The declarant's percentage of ownership in each asset and
25 percentage of obligation for each liability where property is not
26 solely owned by one or both of the parties. The preliminary
27 declaration may also set forth the declarant's characterization of
28 each asset or liability.

29 (d) A declarant may amend his or her preliminary declaration
30 of disclosure without leave of the court. Proof of service of any
31 amendment shall be filed with the court.

32 (e) Along with the preliminary declaration of disclosure, each
33 party shall provide the other party with a completed income and
34 expense declaration unless an income and expense declaration
35 has already been provided and is current and valid.

36 ~~SEC. 24.~~

37 SEC. 20. Section 2106 of the Family Code is amended to
38 read:

39 2106. Except as provided in subdivision (d) of Section 2105,
40 Section 2110, or absent good cause as provided in Section 2107,

1 no judgment shall be entered with respect to the parties' property
2 rights without each party, or the attorney for that party in this
3 matter, having executed and served a copy of the final
4 declaration of disclosure and current income and expense
5 declaration. Each party, or his or her attorney, shall execute and
6 file with the court a declaration signed under penalty of perjury
7 stating that service of the final declaration of disclosure and
8 current income and expense declaration was made on the other
9 party or that service of the final declaration of disclosure has
10 been waived pursuant to subdivision (d) of Section 2105 or in
11 Section 2110.

12 ~~SEC. 25.~~

13 *SEC. 21.* Section 2107 of the Family Code is amended to
14 read:

15 2107. (a) If one party fails to serve on the other party a
16 preliminary declaration of disclosure under Section 2104 or a
17 final declaration of disclosure under Section 2105, or fails to
18 provide the information required in the respective declarations
19 with sufficient particularity, and if the other party has served the
20 respective declaration of disclosure on the noncomplying party,
21 the complying party may, within a reasonable time, request
22 preparation of the appropriate declaration of disclosure or further
23 particularity.

24 (b) If the noncomplying party fails to comply with a request
25 under subdivision (a), the complying party may do one or more
26 of the following:

27 (1) File a motion to compel a further response.

28 (2) File a motion for an order preventing the noncomplying
29 party from presenting evidence on issues that should have been
30 covered in the declaration of disclosure.

31 (3) File a motion showing good cause for the court to grant the
32 complying party's voluntary waiver of receipt of the
33 noncomplying party's preliminary declaration of disclosure
34 under Section 2104 or final declaration of disclosure under
35 Section 2105. The voluntary waiver does not affect the right of
36 either party to request the court to set aside the judgment as
37 provided in subdivision (d).

38 (c) If a party fails to comply with any provision of this
39 chapter, the court shall, in addition to any other remedy provided
40 by law, impose money sanctions against the noncomplying party.

1 Sanctions shall be in an amount sufficient to deter repetition of
2 the conduct or comparable conduct, and shall include reasonable
3 attorney's fees, costs incurred, or both, unless the court finds that
4 the noncomplying party acted with substantial justification or
5 that other circumstances make the imposition of the sanction
6 unjust.

7 (d) Except as otherwise provided in this subdivision, if a court
8 enters a judgment when the parties have failed to comply with all
9 disclosure requirements of this chapter, the court shall set aside
10 the judgment. The failure to comply with the disclosure
11 requirements does not constitute harmless error. If the court
12 granted the complying party's voluntary waiver of receipt of the
13 noncomplying party's preliminary declaration of disclosure
14 pursuant to paragraph (3) of subdivision (b), the court shall set
15 aside the judgment only at the request of the complying party.

16 (e) Upon the motion to set aside judgment, the court may order
17 the parties to provide the preliminary and final declarations of
18 disclosure that were exchanged between them. Absent a court
19 order to the contrary, the disclosure declarations shall not be filed
20 with the court and shall be returned to the parties.

21 ~~SEC. 26.~~

22 *SEC. 22.* Section 12585 of the Government Code is amended
23 to read:

24 12585. (a) Every charitable corporation, unincorporated
25 association, and trustee subject to this article shall file with the
26 Attorney General an initial registration form, under oath, setting
27 forth information and attaching documents prescribed in
28 accordance with rules and regulations of the Attorney General,
29 within 30 days after the corporation, unincorporated association,
30 or trustee initially receives property. A trustee is not required to
31 register as long as the charitable interest in a trust is a future
32 interest, but shall do so within 30 days after any charitable
33 interest in a trust becomes a present interest.

34 (b) The Attorney General shall adopt rules and regulations as
35 to the contents of the initial registration form and the manner of
36 executing and filing that document or documents.

37 ~~SEC. 27.~~

38 *SEC. 23.* Section 12599 of the Government Code is amended
39 to read:

1 12599. (a) “Commercial fundraiser for charitable purposes”
2 means any individual, corporation, unincorporated association, or
3 other legal entity who for compensation does any of the
4 following:

5 (1) Solicits funds, assets, or property in this state for charitable
6 purposes.

7 (2) As a result of a solicitation of funds, assets, or property in
8 this state for charitable purposes, receives or controls the funds,
9 assets, or property solicited for charitable purposes.

10 (3) Employs, procures, or engages any compensated person to
11 solicit, receive, or control funds, assets, or property for charitable
12 purposes.

13 A commercial fundraiser for charitable purposes shall include
14 any person, association of persons, corporation, or other entity
15 that obtains a majority of its inventory for sale by the purchase,
16 receipt, or control for resale to the general public, of salvageable
17 personal property solicited by an organization qualified to solicit
18 donations pursuant to Section 148.3 of the Welfare and
19 Institutions Code.

20 A commercial fundraiser for charitable purposes shall not
21 include a “trustee” as defined in Section 12582 or 12583, a
22 “charitable corporation” as defined in Section 12582.1, or any
23 employee thereof. A commercial fundraiser for charitable
24 purposes shall not include an individual who is employed by or
25 under the control of a commercial fundraiser for charitable
26 purposes registered with the Attorney General. A commercial
27 fundraiser for charitable purposes shall not include any federally
28 insured financial institution that holds as a depository funds
29 received as a result of a solicitation for charitable purposes.

30 As used in this section, “charitable purposes” includes any
31 solicitation in which the name of any organization of law
32 enforcement personnel, firefighters, or other persons who protect
33 the public safety is used or referred to as an inducement for
34 transferring any funds, assets, or property, unless the only
35 expressed or implied purpose of the solicitation is for the sole
36 benefit of the actual active membership of the organization.

37 (b) A commercial fundraiser for charitable purposes shall,
38 prior to soliciting any funds, assets, or property, including
39 salvageable personal property, in California for charitable
40 purposes, or prior to receiving and controlling any funds, assets,

1 or property, including salvageable personal property, as a result
2 of a solicitation in this state for charitable purposes, register with
3 the Attorney General's Registry of Charitable Trusts on a
4 registration form provided by the Attorney General. Renewals of
5 registration shall be filed with the Registry of Charitable Trusts
6 by January 15 of each calendar year in which the commercial
7 fundraiser for charitable purposes does business and shall be
8 effective for one year. A registration or renewal fee of two
9 hundred dollars (\$200) shall be required for registration of a
10 commercial fundraiser for charitable purposes, and shall be
11 payable by certified or cashier's check to the Attorney General's
12 Registry of Charitable Trusts at the time of registration or
13 renewal. The Attorney General may adjust the annual registration
14 or renewal fee, or means of payment, as needed pursuant to this
15 section. The Attorney General's Registry of Charitable Trusts
16 may grant extensions of time to file annual registration as
17 required, pursuant to subdivision (b) of Section 12586.

18 (c) A commercial fundraiser for charitable purposes shall file
19 with the Attorney General's Registry of Charitable Trusts an
20 annual financial report on a form provided by the Attorney
21 General, accounting for all funds collected pursuant to any
22 solicitation for charitable purposes during the preceding calendar
23 year. The annual financial report shall be filed with the Attorney
24 General's Registry of Charitable Trusts no later than 30 days
25 after the close of the preceding calendar year.

26 (d) The contents of the forms for annual registration and
27 annual financial reporting by commercial fundraisers for
28 charitable purposes shall be established by the Attorney General
29 in a manner consistent with the procedures set forth in
30 subdivisions (a) and (b) of Section 12586. The annual financial
31 report shall require a detailed, itemized accounting of funds,
32 assets, or property, solicited for charitable purposes on behalf of
33 each charitable organization exempt from taxation under Section
34 501(c)(3) of the Internal Revenue Code or for each charitable
35 purpose during the accounting period, and shall include, among
36 other data, the following information for funds, assets, or
37 property, solicited by the commercial fundraiser for charitable
38 purposes:

39 (1) Total revenue.

1 (2) The fee or commission charged by the commercial
2 fundraiser for charitable purposes.

3 (3) Salaries paid by the commercial fundraiser for charitable
4 purposes to its officers and employees.

5 (4) Fundraising expenses.

6 (5) Distributions to the identified charitable organization or
7 purpose.

8 (6) The names and addresses of any director, officer, or
9 employee of the commercial fundraiser for charitable purposes
10 who is a director, officer, or employee of any charitable
11 organization listed in the annual financial report.

12 (e) A commercial fundraiser for charitable purposes that
13 obtains a majority of its inventory for sale by the purchase,
14 receipt, or control for resale to the general public, of salvageable
15 personal property solicited by an organization qualified to solicit
16 donations pursuant to Section 148.3 of the Welfare and
17 Institutions Code shall file with the Attorney General's Registry
18 of Charitable Trusts, and not with the sheriff of any county, an
19 annual financial report on a form provided by the Attorney
20 General that is separate and distinct from forms filed by other
21 commercial fundraisers for charitable purposes pursuant to
22 subdivisions (c) and (d).

23 (f) It shall be unlawful for any commercial fundraiser for
24 charitable purposes to solicit funds in this state for charitable
25 purposes unless the commercial fundraiser for charitable
26 purposes has complied with the registration or annual renewal
27 and financial reporting requirements of this article. Failure to
28 comply with these registration or annual renewal and financial
29 reporting requirements shall be grounds for injunction against
30 solicitation in this state for charitable purposes and other civil
31 remedies provided by law.

32 (g) A commercial fundraiser for charitable purposes is a
33 constructive trustee for charitable purposes as to all funds
34 collected pursuant to solicitation for charitable purposes and shall
35 account to the Attorney General for all funds. A commercial
36 fundraiser for charitable purposes is subject to the Attorney
37 General's supervision and enforcement over charitable funds and
38 assets to the same extent as a trustee for charitable purposes
39 under this article.

1 (h) Not less than 10 working days prior to the commencement
2 of each solicitation campaign, event, or service, or not later than
3 commencement of solicitation for solicitations to aid victims of
4 emergency hardship or disasters, a commercial fundraiser for
5 charitable purposes shall file with the Attorney General's
6 Registry of Charitable Trusts a notice on a form prescribed by the
7 Attorney General that sets forth all of the following:

8 (1) The name, address, and telephone number of the
9 commercial fundraiser for charitable purposes.

10 (2) The name, address, and telephone number of the charitable
11 organization with whom the commercial fundraiser has
12 contracted.

13 (3) The fundraising methods to be used.

14 (4) The projected dates when performance under the contract
15 will commence and terminate.

16 (5) The name, address, and telephone number of the person
17 responsible for directing and supervising the work of the
18 commercial fundraiser under the contract.

19 (i) There shall be a written contract between a commercial
20 fundraiser for charitable purposes and a charitable organization
21 for each solicitation campaign, event, or service, that shall be
22 signed by the authorized contracting officer for the commercial
23 fundraiser and by an official of the charitable organization who is
24 authorized to sign by the organization's governing body. The
25 contract shall be available for inspection by the Attorney General
26 and shall contain all of the following provisions:

27 (1) The legal name and address of the charitable organization
28 as registered with the Registry of Charitable Trusts, unless the
29 charitable organization is exempt from registration.

30 (2) A statement of the charitable purpose for which the
31 solicitation campaign, event, or service is being conducted.

32 (3) A statement of the respective obligations of the
33 commercial fundraiser and the charitable organization.

34 (4) If the commercial fundraiser is to be paid a fixed fee, a
35 statement of the fee to be paid to the commercial fundraiser and a
36 good faith estimate of what percentage the fee will constitute of
37 the total contributions received. The contract shall clearly
38 disclose the assumptions upon which the estimate is based, and
39 the stated assumptions shall be based upon all of the relevant

1 facts known to the commercial fundraiser regarding the
2 solicitation to be conducted by the commercial fundraiser.

3 (5) If a percentage fee is to be paid to the commercial
4 fundraiser, a statement of the percentage of the total
5 contributions received that will be remitted to or retained by the
6 charitable organization, or, if the solicitation involves the sale of
7 goods or services or the sale of admissions to a fundraising event,
8 the percentage of the purchase price that will be remitted to the
9 charitable organization. The stated percentage shall be calculated
10 by subtracting from contributions received and sales receipts not
11 only the commercial fundraiser's fee, but also any additional
12 amounts that the charitable organization is obligated to pay as
13 fundraising costs.

14 (6) The effective and termination dates of the contract and the
15 date solicitation activity is to commence within the state.

16 (7) A provision that requires that each contribution in the
17 control or custody of the commercial fundraiser shall in its
18 entirety and within five working days of its receipt comply with
19 either of the following:

20 (A) Be deposited in an account at a bank or other federally
21 insured financial institution that is solely in the name of the
22 charitable organization and over which the charitable
23 organization has sole control of withdrawals.

24 (B) Be delivered to the charitable organization in person, by
25 United States express mail, or by another method of delivery
26 providing for overnight delivery.

27 (8) A statement that the charitable organization exercises
28 control and approval over the content and frequency of any
29 solicitation.

30 (9) If the commercial fundraiser proposes to make any
31 payment in cash or in kind to any person or legal entity to secure
32 any person's attendance at, or sponsorship, approval, or
33 endorsement of, a charity fundraising event, the maximum dollar
34 amount of those payments shall be set forth in the contract.
35 "Charity fundraising event" means any gathering of persons,
36 including, but not limited to, a party, banquet, concert, or show,
37 that is held for the purpose or claimed purpose of raising funds
38 for any charitable purpose or organization.

39 (10) A provision that includes all of the following statements:

1 (A) The charitable organization has the right to cancel the
2 contract without cost, penalty, or liability for a period of 10 days
3 following the date on which the contract is executed.

4 (B) The charitable organization may cancel the contract by
5 serving a written notice of cancellation on the commercial
6 fundraiser.

7 (C) If mailed, service shall be by certified mail, return receipt
8 requested, and cancellation shall be deemed effective upon the
9 expiration of five calendar days from the date of mailing.

10 (D) Any funds collected after effective notice that the contract
11 has been canceled shall be deemed to be held in trust for the
12 benefit of the charitable organization without deduction for costs
13 or expenses of any nature.

14 (E) The charitable organization shall be entitled to recover all
15 funds collected after the date of cancellation.

16 (11) A provision that includes all of the following statements:

17 (A) Following the initial 10-day cancellation period, the
18 charitable organization may terminate the contract by giving 30
19 days' written notice.

20 (B) If mailed, service of the notice shall be by certified mail,
21 return receipt requested, and shall be deemed effective upon the
22 expiration of five calendar days from the date of mailing.

23 (C) In the event of termination under this subdivision, the
24 charitable organization shall be liable for services provided by
25 the commercial fundraiser up to 30 days after the effective
26 service of the notice.

27 (12) A provision that, following the initial 10-day cancellation
28 period, the charitable organization may terminate the contract at
29 any time upon written notice, without payment or compensation
30 of any kind to the commercial fundraiser, if the commercial
31 fundraiser or its agents, employees, or representatives do any of
32 the following:

33 (A) Make any material misrepresentations in the course of
34 solicitations or with respect to the charitable organization.

35 (B) Are found by the charitable organization to have been
36 convicted of a crime arising from the conduct of a solicitation for
37 a charitable organization or purpose punishable as a
38 misdemeanor or a felony.

1 (C) Otherwise conduct fundraising activities in a manner that
2 causes or could cause public disparagement of the charitable
3 organization's good name or good will.

4 (13) Any other information required by the regulations of the
5 Attorney General.

6 (j) It shall be unlawful for a commercial fundraiser for
7 charitable purposes to not disclose the percentage of total
8 fundraising expenses of the fundraiser upon receiving a written
9 or oral request from a person solicited for a contribution for a
10 charitable purpose. "Percentage of total fundraising expenses," as
11 used in this section, means the ratio of the total expenses of the
12 fundraiser to the total revenue received by the fundraiser for the
13 charitable purpose for which funds are being solicited, as
14 reported on the most recent financial report filed with the
15 Attorney General's Registry of Charitable Trusts. A commercial
16 fundraiser shall disclose this information in writing within five
17 working days from receipt of a request by mail or facsimile. A
18 commercial fundraiser shall orally disclose this information
19 immediately upon a request made in person or in a telephone
20 conversation and shall follow this response with a written
21 disclosure within five working days. Failure to comply with the
22 requirements of this subdivision shall be grounds for an
23 injunction against solicitation in this state for charitable purposes
24 and other civil remedies provided by law.

25 (k) If the Attorney General issues a report to the public
26 containing information obtained from registration forms or
27 financial report forms filed by commercial fundraisers for
28 charitable purposes, there shall be a separate section concerning
29 commercial fundraisers for charitable purposes that obtain a
30 majority of their inventory for sale by the purchase, receipt, or
31 control for resale to the general public, of salvageable personal
32 property solicited by an organization qualified to solicit
33 donations pursuant to Section 148.3 of the Welfare and
34 Institutions Code. The report shall include an explanation of the
35 distinctions between these thrift store operations and other types
36 of commercial fundraising.

37 (l) No person may act as a commercial fundraiser for
38 charitable purposes if that person, any officer or director of that
39 person's business, any person with a controlling interest in the
40 business, or any person the commercial fundraiser employs,

engages, or procures to solicit for compensation, has been convicted by a court of any state or the United States of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or felony.

(m) A commercial fundraiser for charitable purposes shall not solicit in the state on behalf of a charitable organization unless that charitable organization is registered or is exempt from registration with the Attorney General's Registry of Charitable Trusts.

(n) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect any other provision or application of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

~~SEC. 28.~~

SEC. 24. Section 12599.1 of the Government Code is amended to read:

12599.1. (a) "Fundraising counsel for charitable purposes" is defined as any individual, corporation, unincorporated association, or other legal entity who is described by all of the following:

(1) For compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes.

(2) Does not solicit funds, assets, or property for charitable purposes.

(3) Does not receive or control funds, assets, or property solicited for charitable purposes in this state.

(4) Does not employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(b) "Fundraising counsel for charitable purposes" does not include any of the following:

(1) An attorney, investment counselor, or banker who in the conduct of that person's profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

(2) A trustee as defined in Section 12582 or 12583.

(3) A charitable corporation as defined in Section 12582.1, or any employee thereof.

1 (4) A person employed by or under the control of a
2 fundraising counsel for charitable purposes, as defined in
3 subdivision (a).

4 (5) A person, corporation, or other legal entity, engaged as an
5 independent contractor directly by a trustee or a charitable
6 corporation, that prints, reproduces, or distributes written
7 materials prepared by a trustee, a charitable corporation, or any
8 employee thereof, or that performs artistic or graphic services
9 with respect to written materials prepared by a trustee, a
10 charitable corporation, or any employee thereof, provided that
11 the independent contractor does not perform any of the activities
12 described in paragraph (1) of subdivision (a).

13 (6) A person whose total annual gross compensation for
14 performing any activity described in paragraph (1) of subdivision
15 (a) does not exceed twenty-five thousand dollars (\$25,000).

16 (c) A fundraising counsel for charitable purposes shall, prior to
17 managing, advising, counseling, consulting, or preparing material
18 for, or with respect to, the solicitation in this state of funds,
19 assets, or property for charitable purposes, register with the
20 Attorney General's Registry of Charitable Trusts on a
21 registration form provided by the Attorney General. Renewals of
22 registration shall be filed with the Registry of Charitable Trusts
23 by January 15 of each calendar year in which the fundraising
24 counsel for charitable purposes does business and shall be
25 effective for one year.

26 A registration or renewal fee of two hundred dollars (\$200)
27 shall be required for registration of a fundraising counsel for
28 charitable purposes, and shall be payable by certified or cashier's
29 check to the Attorney General's Registry of Charitable Trusts at
30 the time of registration and renewal. The Attorney General may
31 adjust the annual registration or renewal fee, or means of
32 payment, as needed pursuant to this section. The Attorney
33 General's Registry of Charitable Trusts may grant extensions of
34 time to file annual registration as required, pursuant to
35 subdivision (b) of Section 12586.

36 (d) A fundraising counsel for charitable purposes shall file
37 annually with the Attorney General's Registry of Charitable
38 Trusts on a form provided by the Attorney General, a report
39 listing each person, corporation, unincorporated association, or
40 other legal entity for whom the fundraising counsel has

1 performed any services described in paragraph (1) of subdivision
2 (a), and a statement certifying that the fundraising counsel had a
3 written contract with each listed person, corporation,
4 unincorporated association, or other legal entity that complied
5 with the requirements of subdivision (f).

6 (e) Not less than 10 working days prior to the commencement
7 of the performance of any service for a charitable organization by
8 a fundraising counsel for charitable purposes, or not later than
9 commencement of solicitation for solicitations to aid victims of
10 emergency hardship or disasters, the fundraising counsel shall
11 file with the Attorney General's Registry of Charitable Trusts a
12 notice on a form prescribed by the Attorney General that sets
13 forth all of the following:

14 (1) The name, address, and telephone number of the
15 fundraising counsel for charitable purposes.

16 (2) The name, address, and telephone number of the charitable
17 organization with whom the fundraising counsel has contracted.

18 (3) The projected dates when performance under the contract
19 will commence and terminate.

20 (4) The name, address, and telephone number of the person
21 responsible for directing and supervising the work of the
22 fundraising counsel under the contract.

23 (f) There shall be a written contract between a fundraising
24 counsel for charitable purposes and a charitable organization for
25 each service to be performed by the fundraising counsel for the
26 charitable organization, that shall be signed by the authorized
27 contracting officer for the fundraising counsel and by an official
28 of the charitable organization who is authorized to sign by the
29 organization's governing body. The contract shall be available
30 for inspection by the Attorney General and shall contain all of the
31 following provisions:

32 (1) The legal name and address of the charitable organization
33 as registered with the Registry of Charitable Trusts unless the
34 charitable organization is exempt from registration.

35 (2) A statement of the charitable purpose for which the
36 solicitation campaign is being conducted.

37 (3) A statement of the respective obligations of the fundraising
38 counsel and the charitable organization.

1 (4) A clear statement of the fees and any other form of
2 compensation, including commissions and property, that will be
3 paid to the fundraising counsel.

4 (5) The effective and termination dates of the contract and the
5 date services will commence with respect to solicitation in this
6 state of contributions for a charitable organization.

7 (6) A statement that the fundraising counsel will not at any
8 time solicit funds, assets, or property for charitable purposes,
9 receive or control funds, assets, or property solicited for
10 charitable purposes, or employ, procure, or engage any
11 compensated person to solicit, receive, or control funds, assets, or
12 property for charitable purposes.

13 (7) A statement that the charitable organization exercises
14 control and approval over the content and frequency of any
15 solicitation.

16 (8) A provision that includes all of the following statements:

17 (A) The charitable organization has the right to cancel the
18 contract without cost, penalty, or liability for a period of 10 days
19 following the date on which the contract is executed.

20 (B) The charitable organization may cancel the contract by
21 serving a written notice of cancellation on the fundraising
22 counsel.

23 (C) If mailed, service shall be by certified mail, return receipt
24 requested, and cancellation shall be deemed effective upon the
25 expiration of five calendar days from the date of mailing.

26 (9) A provision that includes all of the following statements:

27 (A) Following the initial 10-day cancellation period, the
28 charitable organization may terminate the contract by giving 30
29 days' written notice.

30 (B) If mailed, service of the notice shall be by certified mail,
31 return receipt requested, and shall be deemed effective upon the
32 expiration of five calendar days from the date of mailing.

33 (C) In the event of termination under this subdivision, the
34 charitable organization shall be liable for services provided by
35 the fundraising counsel to the effective date of the termination.

36 (10) Any other information required by the regulations of the
37 Attorney General.

38 (g) It shall be unlawful for any fundraising counsel for
39 charitable purposes to manage, advise, counsel, consult, or
40 prepare material for, or with respect to, the solicitation in this

1 state of funds, assets, or property for charitable purposes unless
2 the fundraising counsel for charitable purposes has complied
3 with the registration or annual renewal and financial reporting
4 requirements of this article.

5 (h) A fundraising counsel for charitable purposes is subject to
6 the Attorney General's supervision and enforcement to the same
7 extent as a trustee for charitable purposes under this article.

8 (i) If any provision of this section or the application thereof to
9 any person or circumstances is held invalid, that invalidity shall
10 not affect other provisions or application of this section which
11 can be given effect without the invalid provision or application,
12 and to this end the provisions of this section are severable.

13 ~~SEC. 29.~~

14 *SEC. 25.* Section 12599.2 of the Government Code is
15 amended to read:

16 12599.2. (a) "Commercial coventurer" is defined as any
17 person who, for profit, is regularly and primarily engaged in
18 trade or commerce other than in connection with the raising of
19 funds, assets, or property for charitable organizations or
20 charitable purposes, and who represents to the public that the
21 purchase or use of any goods, services, entertainment, or any
22 other thing of value will benefit a charitable organization or will
23 be used for a charitable purpose.

24 (b) A commercial coventurer is a trustee as defined in Section
25 12582. Notwithstanding the requirements of Sections 12585 and
26 12586, a commercial coventurer is not required to register or file
27 periodic reports with the Attorney General provided that the
28 commercial coventurer:

29 (1) Has a written contract with a trustee or charitable
30 corporation subject to this article, signed by two officers of the
31 trustee or charitable corporation, prior to representing to the
32 public that the purchase or use of any goods, services,
33 entertainment, or any other thing of value will benefit the trustee
34 or charitable corporation or will be used for a charitable purpose.

35 (2) Within 90 days after commencement of those
36 representations, and at the end of each successive 90-day period
37 during which the representations are made, transfers to that
38 trustee or charitable corporation subject to this article all funds,
39 assets, or property received as a result of the representations.

(3) Provides in conjunction with each transfer required by paragraph (2) a written accounting to the trustee or charitable corporation subject to this article of all funds, assets, or property received sufficient to enable the trustee or charitable corporation (A) to determine that representations made to the public on its behalf have been adhered to accurately and completely, and (B) to prepare its periodic report filed with the Attorney General pursuant to Section 12586.

(c) A commercial coventurer that does not meet the requirements of paragraphs (1), (2), and (3) of subdivision (b) shall register and report to the Attorney General on forms required by the Attorney General. An annual registration or renewal fee of two hundred dollars (\$200) shall be required for registration or renewal of registration of a commercial coventurer, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee, or means of payment, as needed pursuant to this section.

~~SEC. 30. Section 31000.6 of the Government Code is amended to read:~~

~~31000.6. (a) Upon request of the assessor or the sheriff of the county, the board of supervisors shall contract with and employ legal counsel to assist the assessor or the sheriff in the performance of his or her duties in any case where the county counsel or the district attorney would have a conflict of interest in representing the assessor or the sheriff.~~

~~(b) In the event that the board of supervisors does not concur with the assessor or the sheriff that a conflict of interest exists, the assessor or the sheriff, after giving notice to the county counsel or the district attorney, may initiate an ex parte proceeding before the presiding judge of the superior court. The county counsel or district attorney may file an affidavit in the proceeding in opposition to, or in support of, the assessor's or the sheriff's position.~~

~~(c) The presiding superior court judge that determines in any ex parte proceeding that a conflict actually exists, must, if requested by one of the parties, also rule whether representation by the county counsel or district attorney through the creation of an "ethical wall" is appropriate. The factors to be considered in~~

1 this determination of whether an “ethical wall” should be created
2 are: (1) equal representation, (2) level of support, (3) access to
3 resources, (4) zealous representation, or (5) any other
4 consideration that relates to proper representation.

5 (d) ~~If a court determines that the action brought by the~~
6 ~~assessor or sheriff is frivolous and in bad faith, the assessor’s~~
7 ~~office or sheriff’s office shall pay their own legal costs and all~~
8 ~~costs incurred in the action by the opposing party. As used in this~~
9 ~~section, “bad faith” and “frivolous” have the meaning given in~~
10 ~~Section 128.5 of the Code of Civil Procedure.~~

11 (e) ~~If the presiding judge determines that a conflict of interest~~
12 ~~does exist, and that representation by the county counsel or~~
13 ~~district attorney through the creation of an ethical wall is~~
14 ~~inappropriate, the board of supervisors shall immediately employ~~
15 ~~legal counsel to assist the assessor or the sheriff.~~

16 (f) ~~This section shall also apply to any matter brought after an~~
17 ~~assessor or sheriff leaves office under the circumstances that if~~
18 ~~the matter had arisen or been discovered while the official was~~
19 ~~still in office, he or she would have been authorized under this~~
20 ~~section to request the appointment of independent counsel.~~

21 (g) ~~As used in this section, “conflict of interest” means a~~
22 ~~conflict of interest as defined in Rule 3-310 of the Rules of~~
23 ~~Professional Conduct of the State Bar of California, as construed~~
24 ~~for public attorneys.~~

25 *SEC. 26. Section 68666 of the Government Code is amended*
26 *to read:*

27 68666. (a) The Supreme Court may compensate counsel
28 representing indigent defendants in automatic appeals arising out
29 of a judgment of death or for state postconviction proceedings in
30 those cases, at a rate of at least one hundred twenty-five dollars
31 (\$125) per allowable hour, as defined by the court’s Payment
32 Guidelines for Appointed Counsel Representing Indigent
33 Criminal Appellants. However, nothing in this section is intended
34 to prohibit the hiring of counsel under a flat-fee arrangement.

35 (b) ~~The Supreme Court may raise the set a guideline limitation~~
36 ~~on investigative and other expenses allowable for counsel to~~
37 ~~adequately investigate and present collateral claims to up to~~
38 ~~twenty-five thousand dollars (\$25,000) without an order to show~~
39 ~~cause.~~

1 (c) It is the intent of the Legislature that payments to
2 appointed counsel be made within 60 days of submission of a
3 billing.

4 ~~SEC. 31.~~

5 *SEC. 27.* Section 68756 is added to the Government Code, to
6 read:

7 68756. (a) Notwithstanding any other provision of law, the
8 commission shall be given access, on an ex parte basis, to all
9 nonpublic records of court proceedings, including confidential
10 sealed records and transcripts, relevant to the performance of any
11 judge, former judge, or subordinate judicial officer (hereafter,
12 collectively, judicial officer) within the commission's jurisdiction
13 under Sections 18 and 18.1 of Article VI of the Constitution. The
14 commission shall make a written request to the court in which the
15 proceedings occurred. The court shall file the request under seal.
16 Access to the requested records shall be provided within 15 days
17 of the written request.

18 (b) (1) If the commission or the judicial officer who is the
19 subject of the commission's investigation or proceeding intends
20 to publicly disclose any nonpublic records or information
21 obtained pursuant to subdivision (a), the commission or judicial
22 officer shall petition the court that granted access to the records
23 or another court that has jurisdiction, for authorization to
24 disclose. The petition, filed under seal, shall identify the records
25 or information to be disclosed and the reason for disclosure. To
26 the extent that it does not unduly lessen the evidentiary value of
27 the records or otherwise defeat the purpose of disclosure, the
28 petitioner shall redact from the records names and other
29 identifying information.

30 (2) The court shall grant the petition if it determines that there
31 is good cause for disclosure. The court may issue protective
32 orders, including further redaction of names or other identifying
33 information, to the extent that they do not unduly lessen the
34 evidentiary value of the records or otherwise defeat the purpose
35 of disclosure. Within 15 days after the filing of a petition, the
36 court may order the petitioner to give notice of the intended
37 disclosure to any person who may be adversely affected by the
38 disclosure. Any person who has been provided notice pursuant to
39 this section may, within 20 days of service of the notice, file an
40 objection to the intended notice with the court and the petitioner.

1 (3) The court shall grant or deny the petition in whole or in
2 part, stating its reasons therefore, within 15 days of a timely
3 objection, or the expiration of time for filing an objection if no
4 objection is filed, or within 15 days of the filing of the petition
5 for which no notice is required.

6 (c) Access to, and disclosure of, records under this section
7 shall not be limited by any court order sealing those records.

8 (d) Persons entitled to file an objection to the intended
9 disclosure shall not include the judge, former judge, or
10 subordinate judicial officer who is the subject of the
11 commission's investigation or disciplinary proceedings, unless he
12 or she was a party or parent, guardian, or conservator of a party
13 in the underlying action. A request or petition filed under this
14 section shall not be considered or ruled on by a judicial officer
15 who is the subject of the commission's investigation or
16 disciplinary proceedings related to the requested information.

17 ~~SEC. 32.~~

18 *SEC. 28.* Section 959.1 of the Penal Code is amended to read:

19 959.1. (a) Notwithstanding Sections 740, 806, 949, and 959
20 or any other law to the contrary, a criminal prosecution may be
21 commenced by filing an accusatory pleading in electronic form
22 with the magistrate or in a court having authority to receive it.

23 (b) As used in this section, accusatory pleadings include, but
24 are not limited to, the complaint, the information, and the
25 indictment.

26 (c) A magistrate or court is authorized to receive and file an
27 accusatory pleading in electronic form if all of the following
28 conditions are met:

29 (1) The accusatory pleading is issued in the name of, and
30 transmitted by, a public prosecutor or law enforcement agency
31 filing pursuant to Chapter 5c (commencing with Section 853.5)
32 or Chapter 5d (commencing with Section 853.9), or by a clerk of
33 the court with respect to complaints issued for the offenses of
34 failure to appear, pay a fine, or comply with an order of the court.

35 (2) The magistrate or court has the facility to electronically
36 store the accusatory pleading for the statutory period of record
37 retention.

38 (3) The magistrate or court has the ability to reproduce the
39 accusatory pleading in physical form upon demand and payment
40 of any costs involved.

1 An accusatory pleading shall be deemed to have been filed
2 when it has been received by the magistrate or court.

3 When transmitted in electronic form, the accusatory pleading
4 shall be exempt from any requirement that it be subscribed by a
5 natural person. It is sufficient to satisfy any requirement that an
6 accusatory pleading, or any part of it, be sworn to before an
7 officer entitled to administer oaths, if the pleading, or any part of
8 it, was in fact sworn to and the electronic form indicates which
9 parts of the pleading were sworn to and the name of the officer
10 who administered the oath.

11 (d) Notwithstanding any other law, a notice to appear issued
12 on a form approved by the Judicial Council may be received and
13 filed by a court in electronic form, if the following conditions are
14 met:

15 (1) The notice to appear is issued and transmitted by a law
16 enforcement agency prosecuting pursuant to Chapter 5c
17 (commencing with Section 853.5) or Chapter 5d (commencing
18 with Section 853.9) of Title 3 of Part 2 of this code, or Chapter 2
19 (commencing with Section 40300) of Division 17 of the Vehicle
20 Code.

21 (2) The court has all of the following:

22 (A) The ability to receive the notice to appear in electronic
23 format.

24 (B) The facility to electronically store an electronic copy and
25 the data elements of the notice to appear for the statutory period
26 of record retention.

27 (C) The ability to reproduce the electronic copy of the notice
28 to appear and those data elements in printed form upon demand
29 and payment of any costs involved.

30 (3) The issuing agency has the ability to reproduce the notice
31 to appear in physical form upon demand and payment of any
32 costs involved.

33 (e) A notice to appear that is received under subdivision (d) is
34 deemed to have been filed when it has been accepted by the court
35 and is in the form approved by the Judicial Council.

36 (f) If transmitted in electronic form, the notice to appear is
37 deemed to have been signed by the defendant if it includes a
38 digitized facsimile of the defendant's signature on the notice to
39 appear. A notice to appear filed electronically under subdivision
40 (d) need not be subscribed by the citing officer. An electronically

submitted notice to appear need not be verified by the citing officer with a declaration under penalty of perjury if the electronic form indicates which parts of the notice are verified by that declaration and the name of the officer making the declaration.

~~SEC. 33.~~

SEC. 29. Section 11709.2 of the Vehicle Code, as amended by Section 7 of Chapter 128 of the Statutes of 2005, is amended to read:

11709.2. Every dealer shall conspicuously display a notice, not less than eight inches high and 10 inches wide, in each sales office and sales cubicle of a dealer's established place of business where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees, and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:

“THERE IS NO COOLING-OFF PERIOD UNLESS YOU
OBTAIN A CONTRACT CANCELLATION OPTION

California law does not provide for a “cooling-off” or other cancellation period for vehicle lease or purchase contracts. Therefore, you cannot later cancel such a contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud.

However, California law does require a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than \$40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.”

~~SEC. 34.~~

SEC. 30. Section 11713.21 of the Vehicle Code is amended to read:

11713.21. (a) (1) A dealer shall not sell a used vehicle, as defined in Section 665 and subject to registration under this code, at retail to an individual for personal, family, or household use without offering the buyer a contract cancellation option agreement that allows the buyer to return the vehicle without cause. This section does not apply to a used vehicle having a purchase price of forty thousand dollars (\$40,000) or more, a motorcycle, as defined in Section 400, or a recreational vehicle, as defined in Section 18010 of the Health and Safety Code.

(2) The purchase price for the contract cancellation option shall not exceed the following:

(A) Seventy-five dollars (\$75) for a vehicle with a cash price of five thousand dollars (\$5,000) or less.

(B) One hundred fifty dollars (\$150) for a vehicle with a cash price of more than five thousand dollars (\$5,000), but not more than ten thousand dollars (\$10,000).

(C) Two hundred fifty dollars (\$250) for a vehicle with a cash price of more than ten thousand dollars (\$10,000), but not more than thirty thousand dollars (\$30,000).

(D) One percent of the purchase price for a vehicle with a cash price of more than thirty thousand dollars (\$30,000), but less than forty thousand dollars (\$40,000).

The term “cash price” as used in this paragraph has the same meaning as described in subparagraph (A) of paragraph (1) of subdivision (a) of Section 2982 of the Civil Code. “Cash price” also excludes registration, transfer, titling, license, and California tire and optional business partnership automation fees.

(b) To comply with subdivision (a), and notwithstanding Section 2981.9 of the Civil Code, a contract cancellation option agreement shall be contained in a document separate from the conditional sale contract or other vehicle purchase agreement and shall contain, at a minimum, the following:

(1) The name of the seller and the buyer.

(2) A description and the Vehicle Identification Number of the vehicle purchased.

(3) A statement specifying the time within which the buyer must exercise the right to cancel the purchase under the contract cancellation option and return the vehicle to the dealer. The dealer shall not specify a time that is earlier than the dealer’s

1 close of business on the second day following the day on which
2 the vehicle was originally delivered to the buyer by the dealer.

3 (4) A statement that clearly and conspicuously specifies the
4 dollar amount of any restocking fee the buyer must pay to the
5 dealer to exercise the right to cancel the purchase under the
6 contract cancellation option. The restocking fee shall not exceed
7 one hundred seventy-five dollars (\$175) if the vehicle's cash
8 price is five thousand dollars (\$5,000) or less, three hundred fifty
9 dollars (\$350) if the vehicle's cash price is less than ten thousand
10 dollars (\$10,000), and five hundred dollars (\$500) if the vehicle
11 cash price is ten thousand dollars (\$10,000) or more. The dealer
12 shall apply toward the restocking fee the price paid by the buyer
13 for the contract cancellation option. The price for purchase of the
14 contract cancellation option is not otherwise subject to setoff or
15 refund.

16 (5) A statement specifying the maximum number of miles that
17 the vehicle may be driven after its original delivery by the dealer
18 to the buyer to remain eligible for cancellation under the contract
19 cancellation option. A dealer shall not specify fewer than 250
20 miles in the contract cancellation option agreement.

21 (6) A statement that the contract cancellation option gives the
22 buyer the right to cancel the purchase and obtain a full refund,
23 minus the purchase price for the contract cancellation option
24 agreement; and that the right to cancel will apply only if, within
25 the time specified in the contract cancellation option agreement,
26 the following are personally delivered to the selling dealer by the
27 buyer: a written notice exercising the right to cancel the purchase
28 signed by the buyer; any restocking fee specified in the contract
29 cancellation option agreement minus the purchase price for the
30 contract cancellation option agreement; the original contract
31 cancellation option agreement and vehicle purchase contract and
32 related documents, if the seller gave those original documents to
33 the buyer; all original vehicle titling and registration documents,
34 if the seller gave those original documents to the buyer; and the
35 vehicle, free of all liens and encumbrances, other than any lien or
36 encumbrance created by or incident to the conditional sales
37 contract, any loan arranged by the dealer, or any purchase money
38 loan obtained by the buyer from a third party, and in the same
39 condition as when it was delivered by the dealer to the buyer,
40 reasonable wear and tear and any defect or mechanical problem

1 that manifests or becomes evident after delivery that was not
2 caused by the buyer excepted, and which must not have been
3 driven beyond the mileage limit specified in the contract
4 cancellation option agreement. The agreement may also provide
5 that the buyer will execute documents reasonably necessary to
6 effectuate the cancellation and refund and as reasonably required
7 to comply with applicable law.

8 (7) At the bottom of the contract cancellation option
9 agreement, a statement that may be signed by the buyer to
10 indicate the buyer's election to exercise the right to cancel the
11 purchase under the terms of the contract cancellation option
12 agreement, and the last date and time by which the option to
13 cancel may be exercised, followed by a line for the buyer's
14 signature. A particular form of statement is not required, but the
15 following statement is sufficient: "By signing below, I elect to
16 exercise my right to cancel the purchase of the vehicle described
17 in this agreement." The buyer's delivery of the purchase
18 cancellation agreement to the dealer with the buyer's signature
19 following this statement shall constitute sufficient written notice
20 exercising the right to cancel the purchase under paragraph (6).
21 The dealer shall provide the buyer with the statement required by
22 this paragraph in duplicate to enable the buyer to return the
23 signed cancellation notice and retain a copy of the cancellation
24 agreement.

25 (c) (1) No later than the second day following the day on
26 which the buyer exercises the right to cancel the purchase in
27 compliance with the contract cancellation option agreement, the
28 dealer shall cancel the contract and provide the buyer with a full
29 refund, including that portion of the sales tax attributable to
30 amounts excluded pursuant to Section 6012.3 of the Revenue and
31 Taxation Code.

32 (2) If the buyer was not charged for the contract cancellation
33 option agreement, the dealer shall return to the buyer, no later
34 than the day following the day on which the buyer exercises the
35 right to cancel the purchase, any motor vehicle the buyer left
36 with the seller as a downpayment or trade-in. If the dealer has
37 sold or otherwise transferred title to the motor vehicle that was
38 left as a downpayment or trade-in, the full refund described in
39 paragraph (1) shall include the fair market value of the motor

1 vehicle left as a downpayment or trade-in, or its value as stated in
2 the contract or purchase order, whichever is greater.

3 (3) If the buyer was charged for the contract cancellation
4 option agreement, the dealer shall retain any motor vehicle the
5 buyer left with the dealer as a downpayment or trade-in until the
6 buyer exercises the right to cancel or the right to cancel expires.
7 If the buyer exercises the right to cancel the purchase, the dealer
8 shall return to the buyer, no later than the day following the day
9 on which the buyer exercises the right to cancel the purchase, any
10 motor vehicle the buyer left with the seller as a downpayment or
11 trade-in. If the dealer has inadvertently sold or otherwise
12 transferred title to the motor vehicle as the result of a bona fide
13 error, notwithstanding reasonable procedures designed to avoid
14 that error, the inadvertent sale or transfer of title shall not be
15 deemed a violation of this paragraph, and the full refund
16 described in paragraph (1) shall include the retail market value of
17 the motor vehicle left as a downpayment or trade-in, or its value
18 as stated in the contract or purchase order, whichever is greater.

19 (d) If the dealer received a portion of the purchase price by
20 credit card, or other third-party payer on the buyer's account, the
21 dealer may refund that portion of the purchase price to the credit
22 card issuer or third-party payer for credit to the buyer's account.

23 (e) Notwithstanding subdivision (a), a dealer is not required to
24 offer a contract cancellation option agreement to an individual
25 who exercised his or her right to cancel the purchase of a vehicle
26 from the dealer pursuant to a contract cancellation option
27 agreement during the immediately preceding 30 days. A dealer is
28 not required to give notice to a subsequent buyer of the return of
29 a vehicle pursuant to this section. This subdivision does not
30 abrogate or limit any disclosure obligation imposed by any other
31 law.

32 (f) This section does not affect or alter the legal rights, duties,
33 obligations, or liabilities of the buyer, the dealer, or the dealer's
34 agents or assigns, that would exist in the absence of a contract
35 cancellation option agreement. The buyer is the owner of a
36 vehicle when he or she takes delivery of a vehicle until the
37 vehicle is returned to the dealer pursuant to a contract
38 cancellation option agreement, and the existence of a contract
39 cancellation option agreement shall not impose permissive user

1 liability on the dealer, or the dealer's agents or assigns, under
2 Section 460 or 17150 or otherwise.

3 (g) Nothing in this section is intended to affect the ability of a
4 buyer to rescind the contract or revoke acceptance under any
5 other law.

6 ~~SEC. 35.~~

7 *SEC. 31.* Section 366.3 of the Welfare and Institutions Code
8 is amended to read:

9 366.3. (a) If a juvenile court orders a permanent plan of
10 adoption or legal guardianship pursuant to Section 360 or 366.26,
11 the court shall retain jurisdiction over the child until the child is
12 adopted or the legal guardianship is established, except as
13 provided for in Section 366.29. The status of the child shall be
14 reviewed every six months to ensure that the adoption or legal
15 guardianship is completed as expeditiously as possible. When the
16 adoption of the child has been granted, the court shall terminate
17 its jurisdiction over the child. Following establishment of a legal
18 guardianship, the court may continue jurisdiction over the child
19 as a dependent child of the juvenile court or may terminate its
20 dependency jurisdiction and retain jurisdiction over the child as a
21 ward of the legal guardianship, as authorized by Section 366.4.
22 If, however, a relative of the child is appointed the legal guardian
23 of the child and the child has been placed with the relative for at
24 least 12 months, the court shall, except if the relative guardian
25 objects, or upon a finding of exceptional circumstances,
26 terminate its dependency jurisdiction and retain jurisdiction over
27 the child as a ward of the guardianship, as authorized by Section
28 366.4. Following a termination of parental rights, the parent or
29 parents shall not be a party to, or receive notice of, any
30 subsequent proceedings regarding the child.

31 (b) If the court has dismissed dependency jurisdiction
32 following the establishment of a legal guardianship, or no
33 dependency jurisdiction attached because of the granting of a
34 legal guardianship pursuant to Section 360, and the legal
35 guardianship is subsequently revoked or otherwise terminated,
36 the county department of social services or welfare department
37 shall notify the juvenile court of this fact. The court may vacate
38 its previous order dismissing dependency jurisdiction over the
39 child.

1 Notwithstanding Section 1601 of the Probate Code, the
2 proceedings to terminate a legal guardianship that has been
3 granted pursuant to Section 360 or 366.26 shall be held in the
4 juvenile court, unless the termination is due to the emancipation
5 or adoption of the child. Prior to the hearing on a petition to
6 terminate legal guardianship pursuant to this paragraph, the court
7 shall order the county department of social services or welfare
8 department to prepare a report, for the court's consideration, that
9 shall include an evaluation of whether the child could safely
10 remain in the legal guardian's home, without terminating the
11 legal guardianship, if services were provided to the child or legal
12 guardian. If applicable, the report shall also identify
13 recommended services to maintain the legal guardianship and set
14 forth a plan for providing those services. If the petition to
15 terminate legal guardianship is granted, the juvenile court may
16 resume dependency jurisdiction over the child, and may order the
17 county department of social services or welfare department to
18 develop a new permanent plan, which shall be presented to the
19 court within 60 days of the termination. If no dependency
20 jurisdiction has attached, the social worker shall make any
21 investigation he or she deems necessary to determine whether the
22 child may be within the jurisdiction of the juvenile court, as
23 provided in Section 328.

24 Unless the parental rights of the child's parent or parents have
25 been terminated, they shall be notified that the legal guardianship
26 has been revoked or terminated and shall be entitled to
27 participate in the new permanency planning hearing. The court
28 shall try to place the child in another permanent placement. At
29 the hearing, the parents may be considered as custodians but the
30 child shall not be returned to the parent or parents unless they
31 prove, by a preponderance of the evidence, that reunification is
32 the best alternative for the child. The court may, if it is in the best
33 interests of the child, order that reunification services again be
34 provided to the parent or parents.

35 (c) If, following the establishment of a legal guardianship, the
36 county welfare department becomes aware of changed
37 circumstances that indicate adoption may be an appropriate plan
38 for the child, the department shall so notify the court. The court
39 may vacate its previous order dismissing dependency jurisdiction
40 over the child and order that a hearing be held pursuant to

1 Section 366.26 to determine whether adoption or continued legal
2 guardianship is the most appropriate plan for the child. The
3 hearing shall be held no later than 120 days from the date of the
4 order. If the court orders that a hearing shall be held pursuant to
5 Section 366.26, the court shall direct the agency supervising the
6 child and the licensed county adoption agency, or the State
7 Department of Social Services if it is acting as an adoption
8 agency in counties that are not served by a county adoption
9 agency, to prepare an assessment under subdivision (b) of
10 Section 366.22.

11 (d) If the child is in a placement other than the home of a legal
12 guardian and jurisdiction has not been dismissed, the status of the
13 child shall be reviewed at least every six months. The review of
14 the status of a child for whom the court has ordered parental
15 rights terminated and who has been ordered placed for adoption
16 shall be conducted by the court. The review of the status of a
17 child for whom the court has not ordered parental rights
18 terminated and who has not been ordered placed for adoption
19 may be conducted by the court or an appropriate local agency.
20 The court shall conduct the review under the following
21 circumstances:

- 22 (1) Upon the request of the child's parents or legal guardians.
23 (2) Upon the request of the child.
24 (3) It has been 12 months since a hearing held pursuant to
25 Section 366.26 or an order that the child remain in long-term
26 foster care pursuant to Section 366.21, 366.22, 366.26, or
27 subdivision (g).
28 (4) It has been 12 months since a review was conducted by the
29 court.

30 The court shall determine whether or not reasonable efforts to
31 make and finalize a permanent placement for the child have been
32 made.

33 (e) Except as provided in subdivision (f), at the review held
34 every six months pursuant to subdivision (d), the reviewing body
35 shall inquire about the progress being made to provide a
36 permanent home for the child, shall consider the safety of the
37 child, and shall determine all of the following:

- 38 (1) The continuing necessity for and appropriateness of the
39 placement.

1 (2) Identification of individuals other than the child's siblings
2 who are important to a child who is 10 years of age or older and
3 has been in out-of-home placement for six months or longer, and
4 actions necessary to maintain the child's relationship with those
5 individuals, provided that those relationships are in the best
6 interest of the child. The social worker shall ask every child who
7 is 10 years of age or older and who has been in out-of-home
8 placement for six months or longer to identify individuals other
9 than the child's siblings who are important to the child, and may
10 ask any other child to provide that information, as appropriate.
11 The social worker shall make efforts to identify other individuals
12 who are important to the child, consistent with the child's best
13 interests.

14 (3) The continuing appropriateness and extent of compliance
15 with the permanent plan for the child, including efforts to
16 maintain relationships between a child who is 10 years of age or
17 older and who has been in out-of-home placement for six months
18 or longer and individuals who are important to the child and
19 efforts to identify a prospective adoptive parent or legal guardian,
20 including, but not limited to, child-specific recruitment efforts
21 and listing on an adoption exchange.

22 (4) The extent of the agency's compliance with the child
23 welfare services case plan in making reasonable efforts to return
24 the child to a safe home and to complete whatever steps are
25 necessary to finalize the permanent placement of the child.

26 (5) Whether there should be any limitation on the right of the
27 parent or guardian to make educational decisions for the child.
28 That limitation shall be specifically addressed in the court order
29 and may not exceed what is necessary to protect the child. If the
30 court specifically limits the right of the parent or guardian to
31 make educational decisions for the child, the court shall at the
32 same time appoint a responsible adult to make educational
33 decisions for the child pursuant to Section 361.

34 (6) The adequacy of services provided to the child. The court
35 shall consider the progress in providing the information and
36 documents to the child, as described in Section 391. The court
37 shall also consider the need for, and progress in providing, the
38 assistance and services described in paragraphs (3) and (4) of
39 subdivision (b) of Section 391.

1 (7) The extent of progress the parents or legal guardians have
2 made toward alleviating or mitigating the causes necessitating
3 placement in foster care.

4 (8) The likely date by which the child may be returned to and
5 safely maintained in the home, placed for adoption, legal
6 guardianship, or in another planned permanent living
7 arrangement.

8 (9) Whether the child has any siblings under the court's
9 jurisdiction, and, if any siblings exist, all of the following:

10 (A) The nature of the relationship between the child and his or
11 her siblings.

12 (B) The appropriateness of developing or maintaining the
13 sibling relationships pursuant to Section 16002.

14 (C) If the siblings are not placed together in the same home,
15 why the siblings are not placed together and what efforts are
16 being made to place the siblings together, or why those efforts
17 are not appropriate.

18 (D) If the siblings are not placed together, the frequency and
19 nature of the visits between siblings.

20 (E) The impact of the sibling relationships on the child's
21 placement and planning for legal permanence.

22 The factors the court may consider as indicators of the nature
23 of the child's sibling relationships include, but are not limited to,
24 whether the siblings were raised together in the same home,
25 whether the siblings have shared significant common experiences
26 or have existing close and strong bonds, whether either sibling
27 expresses a desire to visit or live with his or her sibling, as
28 applicable, and whether ongoing contact is in the child's best
29 emotional interests.

30 (10) For a child who is 16 years of age or older, the services
31 needed to assist the child to make the transition from foster care
32 to independent living.

33 The reviewing body shall determine whether or not reasonable
34 efforts to make and finalize a permanent placement for the child
35 have been made.

36 Each licensed foster family agency shall submit reports for
37 each child in its care, custody, and control to the court
38 concerning the continuing appropriateness and extent of
39 compliance with the child's permanent plan, the extent of

1 compliance with the case plan, and the type and adequacy of
2 services provided to the child.

3 Unless their parental rights have been permanently terminated,
4 the parent or parents of the child are entitled to receive notice of,
5 and participate in, those hearings. It shall be presumed that
6 continued care is in the best interests of the child, unless the
7 parent or parents prove, by a preponderance of the evidence, that
8 further efforts at reunification are the best alternative for the
9 child. In those cases, the court may order that further
10 reunification services to return the child to a safe home
11 environment be provided to the parent or parents for a period not
12 to exceed six months.

13 (f) At the review conducted by the court and held at least
14 every six months, regarding a child for whom the court has
15 ordered parental rights terminated and who has been ordered
16 placed for adoption, the county welfare department shall prepare
17 and present to the court a report describing the following:

18 (1) The child's present placement.

19 (2) The child's current physical, mental, emotional, and
20 educational status.

21 (3) If the child has not been placed with a prospective adoptive
22 parent or guardian, identification of individuals, other than the
23 child's siblings, who are important to the child and actions
24 necessary to maintain the child's relationship with those
25 individuals, provided that those relationships are in the best
26 interest of the child. The agency shall ask every child who is 10
27 years of age or older to identify any individuals who are
28 important to him or her, consistent with the child's best interest,
29 and may ask any child who is younger than 10 years of age to
30 provide that information as appropriate. The agency shall make
31 efforts to identify other individuals who are important to the
32 child.

33 (4) Whether the child has been placed with a prospective
34 adoptive parent or parents.

35 (5) Whether an adoptive placement agreement has been signed
36 and filed.

37 (6) If the child has not been placed with a prospective adoptive
38 parent or parents, the efforts made to identify an appropriate
39 prospective adoptive parent or legal guardian, including, but not

1 limited to, child-specific recruitment efforts and listing on an
2 adoption exchange.

3 (7) Whether the final adoption order should include provisions
4 for postadoptive sibling contact pursuant to Section 366.29.

5 (8) The progress of the search for an adoptive placement if one
6 has not been identified.

7 (9) Any impediments to the adoption or the adoptive
8 placement.

9 (10) The anticipated date by which the child will be adopted,
10 or placed in an adoptive home.

11 (11) The anticipated date by which an adoptive placement
12 agreement will be signed.

13 (12) Recommendations for court orders that will assist in the
14 placement of the child for adoption or in the finalization of the
15 adoption.

16 The court shall determine whether or not reasonable efforts to
17 make and finalize a permanent placement for the child have been
18 made.

19 The court shall make appropriate orders to protect the stability
20 of the child and to facilitate and expedite the permanent
21 placement and adoption of the child.

22 (g) At the review held pursuant to subdivision (d) for a child in
23 long-term foster care, the court shall consider all permanency
24 planning options for the child including whether the child should
25 be returned to the home of the parent, placed for adoption, or
26 appointed a legal guardian, or, if compelling reasons exist for
27 finding that none of the foregoing options are in the best interest
28 of the child, whether the child should be placed in another
29 planned permanent living arrangement. The court shall order that
30 a hearing be held pursuant to Section 366.26 unless it determines
31 by clear and convincing evidence, that there is a compelling
32 reason for determining that a hearing held pursuant to Section
33 366.26 is not in the best interest of the child because the child is
34 being returned to the home of the parent, the child is not a proper
35 subject for adoption, or no one is willing to accept legal
36 guardianship. If the licensed county adoption agency, or the
37 department when it is acting as an adoption agency in counties
38 that are not served by a county adoption agency, has determined
39 it is unlikely that the child will be adopted or one of the
40 conditions described in paragraph (1) of subdivision (c) of

1 Section 366.26 applies, that fact shall constitute a compelling
2 reason for purposes of this subdivision. Only upon that
3 determination may the court order that the child remain in foster
4 care, without holding a hearing pursuant to Section 366.26.

5 (h) If, as authorized by subdivision (g), the court orders a
6 hearing pursuant to Section 366.26, the court shall direct the
7 agency supervising the child and the licensed county adoption
8 agency, or the State Department of Social Services when it is
9 acting as an adoption agency in counties that are not served by a
10 county adoption agency, to prepare an assessment as provided for
11 in subdivision (i) of Section 366.21 or subdivision (b) of Section
12 366.22. A hearing held pursuant to Section 366.26 shall be held
13 no later than 120 days from the date of the 12-month review at
14 which it is ordered, and at that hearing the court shall determine
15 whether adoption, legal guardianship, or long-term foster care is
16 the most appropriate plan for the child.

17 (i) The implementation and operation of the amendments to
18 subdivision (e) enacted at the 2005–06 Regular Session shall be
19 subject to appropriation through the budget process and by phase,
20 as provided in Section 366.35.

21 (j) The reviews conducted pursuant to subdivision (a) or (d)
22 may be conducted earlier than every six months if the court
23 determines that an earlier review is in the best interests of the
24 child or as courts rules prescribe.

25 ~~SEC. 36.~~

26 *SEC. 32.* Section 15657.03 of the Welfare and Institutions
27 Code is amended to read:

28 15657.03. (a) An elder or dependent adult who has suffered
29 abuse as defined in Section 15610.07 may seek protective orders
30 as provided in this section.

31 (b) For the purposes of this section, “protective order” means
32 an order that includes any of the following restraining orders,
33 whether issued ex parte, after notice and hearing, or in a
34 judgment:

35 (1) An order enjoining a party from abusing, intimidating,
36 molesting, attacking, striking, stalking, threatening, sexually
37 assaulting, battering, harassing, telephoning, including, but not
38 limited to, annoying telephone calls as described in Section 653m
39 of the Penal Code, destroying personal property, contacting,
40 either directly or indirectly, by mail or otherwise, or coming

1 within a specified distance of, or disturbing the peace of the
2 petitioner.

3 (2) An order excluding a party from the petitioner's residence
4 or dwelling, except that this order shall not be issued if legal or
5 equitable title to, or lease of, the residence or dwelling is in the
6 sole name of the party to be excluded, or is in the name of the
7 party to be excluded and any other party besides the petitioner.

8 (3) An order enjoining a party from specified behavior that the
9 court determines is necessary to effectuate orders described in
10 paragraph (1) or (2).

11 (c) An order may be issued under this section, with or without
12 notice, to restrain any person for the purpose of preventing a
13 recurrence of abuse, if an affidavit shows, to the satisfaction of
14 the court, reasonable proof of a past act or acts of abuse of the
15 petitioning elder or dependent adult.

16 (d) (1) Upon filing a petition for protective orders under this
17 section, the petitioner may obtain a temporary restraining order
18 in accordance with Section 527 of the Code of Civil Procedure,
19 except to the extent this section provides a rule that is
20 inconsistent. The temporary restraining order may include any of
21 the protective orders described in subdivision (b). However, the
22 court may issue an ex parte order excluding a party from the
23 petitioner's residence or dwelling only on a showing of all of the
24 following:

25 (A) Facts sufficient for the court to ascertain that the party
26 who will stay in the dwelling has a right under color of law to
27 possession of the premises.

28 (B) That the party to be excluded has assaulted or threatens to
29 assault the petitioner.

30 (C) That physical or emotional harm would otherwise result to
31 the petitioner.

32 (2) If a temporary restraining order is granted without notice,
33 the matter shall be made returnable on an order requiring cause to
34 be shown why a permanent order should not be granted, on the
35 earliest day that the business of the court will permit, but not later
36 than 20 days or, if good cause appears to the court, 25 days from
37 the date the temporary restraining order is granted, unless the
38 order is otherwise modified or terminated by the court.

39 (e) The court may issue, upon notice and a hearing, any of the
40 orders set forth in subdivision (b). The court may issue, after

1 notice and hearing, an order excluding a person from a residence
2 or dwelling if the court finds that physical or emotional harm
3 would otherwise result to the other party.

4 (f) In the discretion of the court, an order issued after notice
5 and a hearing under this section may have a duration of not more
6 than three years, subject to termination or modification by further
7 order of the court either on written stipulation filed with the court
8 or on the motion of a party. These orders may be renewed upon
9 the request of a party, either for three years or permanently,
10 without a showing of any further abuse since the issuance of the
11 original order, subject to termination or modification by further
12 order of the court either on written stipulation filed with the court
13 or on the motion of a party. The failure to state the expiration
14 date on the face of the form creates an order with a duration of
15 three years from the date of issuance.

16 (g) Upon the filing of a petition for protective orders under
17 this section, the respondent shall be personally served with a
18 copy of the petition, notice of the hearing or order to show cause,
19 temporary restraining order, if any, and any affidavits in support
20 of the petition. Service shall be made at least five days before the
21 hearing. The court may, on motion of the petitioner or on its own
22 motion, shorten the time for service on the respondent.

23 (h) The court may, upon the filing of an affidavit by the
24 applicant that the respondent could not be served within the time
25 required by statute, reissue an order previously issued and
26 dissolved by the court for failure to serve the respondent. The
27 reissued order shall be made returnable on the earliest day that
28 the business of the court will permit, but not later than 20 days
29 or, if good cause appears to the court, 25 days from the date of
30 reissuance. The reissued order shall state on its face the date of
31 expiration of the order.

32 (i) (1) If the person named in a temporary restraining order is
33 personally served with the order and notice of hearing with
34 respect to a restraining order or protective order based thereon,
35 but the person does not appear at the hearing, either personally or
36 by counsel, and the terms and conditions of the restraining order
37 or protective order are identical to the temporary restraining
38 order, except for the duration of the order, then the restraining
39 order or protective order may be served on the person by

1 first-class mail sent to that person at the most current address for
2 the person available to the court.

3 (2) The judicial form for orders issued pursuant to this
4 subdivision shall contain a statement in substantially the
5 following form:
6

7 “NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF
8 THE FACE OF THIS FORM INDICATES THAT BOTH
9 PARTIES WERE PERSONALLY PRESENT AT THE
10 HEARING WHERE THE ORDER WAS ISSUED. IF YOU
11 HAVE BEEN PERSONALLY SERVED WITH A
12 TEMPORARY RESTRAINING ORDER OR EMERGENCY
13 PROTECTIVE ORDER AND NOTICE OF HEARING, BUT
14 YOU DO NOT APPEAR AT THE HEARING EITHER IN
15 PERSON OR BY COUNSEL, AND A RESTRAINING ORDER
16 OR PROTECTIVE ORDER IS ISSUED AT THE HEARING
17 THAT DOES NOT DIFFER FROM THE PRIOR
18 TEMPORARY RESTRAINING ORDER OR EMERGENCY
19 PROTECTIVE ORDER, A COPY OF THE ORDER WILL BE
20 SERVED UPON YOU BY MAIL AT THE FOLLOWING
21 ADDRESS _____. IF THAT ADDRESS IS NOT CORRECT OR
22 YOU WISH TO VERIFY THAT THE TEMPORARY OR
23 EMERGENCY ORDER WAS MADE PERMANENT
24 WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK
25 OF THE COURT AT _____.”
26

27 (j) (1) The court shall order the petitioner or the attorney for
28 the petitioner to deliver, or the clerk of the court to mail, a copy
29 of an order issued under this section, or a reissuance, extension,
30 modification, or termination of the order, and any subsequent
31 proof of service, by the close of the business day on which the
32 order, reissuance, extension, modification, or termination was
33 made, to each local law enforcement agency designated by the
34 petitioner or the attorney for the petitioner having jurisdiction
35 over the residence of the petitioner, and to any additional law
36 enforcement agencies within the court’s discretion as are
37 requested by the petitioner. Each appropriate law enforcement
38 agency shall make available information as to the existence and
39 current status of these orders to law enforcement officers
40 responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service, which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and the officer shall at that time also enforce the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(k) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(l) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(m) (1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject

1 to any other requirements of litigants proceeding in forma
2 pauperis.

3 (B) Any other form that the Judicial Council may adopt for
4 this purpose pursuant to subdivision (r).

5 (2) In conjunction with a hearing pursuant to this section, the
6 court may make an order for the waiver of fees otherwise payable
7 by the petitioner to a law enforcement agency for serving an
8 order issued under this section.

9 (n) The prevailing party in any action brought under this
10 section may be awarded court costs and attorney's fees, if any.

11 (o) (1) An order issued pursuant to this section shall prohibit
12 the person subject to it from owning, possessing, purchasing,
13 receiving, or attempting to purchase or receive, a firearm.

14 (2) Paragraph (1) shall not apply to a case consisting solely of
15 financial abuse unaccompanied by force, threat, harassment,
16 intimidation, or any other form of abuse.

17 (3) The court shall order a person subject to a protective order
18 issued under this section to relinquish any firearms he or she
19 owns or possesses pursuant to Section 527.9 of the Code of Civil
20 Procedure.

21 (4) Every person who owns, possesses, purchases, or receives,
22 or attempts to purchase or receive a firearm while the protective
23 order is in effect is punishable pursuant to subdivision (g) of
24 Section 12021 of the Penal Code.

25 (p) Any willful disobedience of any temporary restraining
26 order or restraining order after hearing granted under this section
27 is punishable pursuant to Section 273.6 of the Penal Code.

28 (q) This section does not apply to any action or proceeding
29 covered by Title 1.6C (commencing with Section 1788) of Part 4
30 of Division 3 of the Civil Code, by Chapter 3 (commencing with
31 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure,
32 or by Division 10 (commencing with Section 6200) of the Family
33 Code. Nothing in this section shall preclude a petitioner's right to
34 use other existing civil remedies.

35 (r) The Judicial Council shall promulgate forms and
36 instructions therefor, rules for service of process, scheduling of
37 hearings, and any other matters required by this section. The
38 petition and response forms shall be simple and concise.

39 ~~SEC. 37. All funds allocated for services to assist~~
40 ~~self-represented parties shall be expended so as to provide~~

1 ~~services in all types of civil actions and proceedings in each~~
2 ~~superior court. Self-help services shall be provided in each~~
3 ~~superior court in proportion to the number of self-represented~~
4 ~~parties appearing in that court in each type of civil matter.~~
5 ~~Services shall be provided in languages other than English where~~
6 ~~appropriate to meet the needs of self-represented parties, and~~
7 ~~shall be provided in a culturally sensitive manner. In the~~
8 ~~allocation of funds for new or augmented services, each court~~
9 ~~shall give priority to underserved areas and to the provision of~~
10 ~~court-based services, supervised by an attorney, and coordinated~~
11 ~~with other legal service providers in the community, including,~~
12 ~~but not limited to, qualified legal service providers, pro bono~~
13 ~~legal service projects, and local bar association referral services,~~
14 ~~in order to provide for assessment of the legal needs of the~~
15 ~~parties and provision of referral information for accessing other~~
16 ~~services or legal representation consistent with the legal needs~~
17 ~~and goals of the parties.~~

18 ~~SEC. 38. If the Commission on State Mandates determines~~
19 ~~that this act contains costs mandated by the state, reimbursement~~
20 ~~to local agencies and school districts for those costs shall be~~
21 ~~made pursuant to Part 7 (commencing with Section 17500) of~~
22 ~~Division 4 of Title 2 of the Government Code.~~